# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State Applicant Certification Policy (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. The policy includes language relative to Louisiana licensing of an individual who has been prepared as a teacher in another state and/or who is certified in another state. This policy reflects two changes from prior out of state licensure policy: (1) the term of the provisional certificate that allows time for the candidate to satisfy Louisiana PRAXIS examination requirements has been extended from one year to three years; and (2) under specified conditions, a teacher who is licensed in another state and has at least four years of successful experience can be exempted from Louisiana PRAXIS examination requirements. The changes in state policy stem directly from changes in law (HB 221).

**Title 28**
**EDUCATION**
**Part I. Board of Elementary and Secondary Education**
**Chapter 9. Bulletins, Regulations, and State Plans**
**Subchapter A. Bulletins and Regulations**
**§903. Teacher Certification Standards and Regulations**

Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:759 (April 2002).

**Out-of-State Applicant**

Certification is authorized only for classroom teachers for levels or subjects available in Louisiana. These regulations shall not apply to administrative, supervisory, or special services requiring a minimum of a master's degree. A teacher who qualifies for a certificate under the out-of-state plan shall be issued either a Type C certificate or (if lacking any of the testing requirements) a three-year nonrenewable provisional certificate.

Individuals qualifying under this plan shall meet requirements 1 (A or B), either 2 or 3, and 4 under the following provisions:

I. The applicant must meet the requirements specified under A or B, below:

A. Approved Program Plan

1. The applicant must possess an earned baccalaureate degree from a regionally accredited institution.

2. The applicant shall have completed a teacher education program at an institution that is accredited at the time of graduation by both the state and regional accrediting agencies.

3. The applicant shall have been issued a regular certificate by the state where he completed the teacher education curriculum. If a certificate was not issued, a letter from the State Department of Education verifying eligibility for a certificate in the area(s) is acceptable.

- or -

B. Certificate Plan

1. The applicant must possess an earned baccalaureate degree from a regionally accredited institution.

2. The applicant shall have been issued a regular teaching certificate by another state. If a certificate was not issued, a letter from the State Department of Education verifying eligibility for a certificate in the area(s) is acceptable.

3. The applicant shall have completed student teaching or internship in the area(s) of certification or have three years of successful teaching experience in the area(s) of certification.

II. The PRAXIS/National Teacher Examinations are required, except as listed in Paragraph 3 below. The applicant must present the appropriate scores on the NTE core battery or common exams or the corresponding PRAXIS tests: Pre-Professional Skills Tests (PPSTs) in Reading, Writing, and Mathematics; and the Principles of Learning and Teaching (PLT) K-6, 5-9, or 7-12; and the specialty area exam in the area in which the teacher education program was completed or the area in which the initial certificate was issued. If there is no specialty area exam score indicated on the Louisiana list of PRAXIS/NTE area scores, only the core battery or common exams of PPSTs and PLT will be required. *The applicant lacking the PRAXIS/NTE may be issued a three-year nonrenewable provisional certificate upon request.*

III. The applicant who holds a valid out-of-state teaching certificate, has at least four years of successful teaching experience in another state as certified by the previous out-of-state school district(s) from satisfactory annual evaluation results, and has completed one year of employment as a teacher in the Louisiana public school system shall not be required to take required Louisiana PRAXIS/NTE examinations or to submit examination scores from any examination previously taken in another state as a prerequisite to the granting of certification in Louisiana, provided that:

A. the teacher meets all other requirements for a Louisiana certificate as may be required by law or board policy;

B. the local superintendent or his designee of the public school system employing the teacher has recommended the teacher for employment for the following school year, subject to the receipt of a valid Louisiana teaching certificate; and

C. the local superintendent or his designee has requested that the teacher be granted a valid Louisiana teaching certificate.

IV. The applicant who has earned a degree five or more years prior to the date of application must have taught as a regular teacher at least one semester within the five-year period immediately preceding the date of application or first employment in Louisiana. Lacking this experience, he shall be required to earn six semester hours in resident, correspondence, and/or extension credits related to his teaching field. These refresher credits must be earned during the five-year period immediately preceding the date of application.

The Louisiana certificate issued shall cover the elementary, secondary, or special education level, depending upon the level of preparation. For the secondary level of teaching, the Louisiana certificate shall cover only major and minor subjects of preparation.

For the required application form, the applicant should consult the Louisiana Department of Education website (www.doe.state.la.us) or write to Certification and Higher Education, State Department of Education, P.O. Box 94064, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

0204#006

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Practitioner Teacher Program
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. The Practitioner Teacher Program provides a streamlined alternate certification option that allows individuals to become certified with a Type B certificate after three years of full-time teaching and combined coursework, if they demonstrate required content knowledge, instructional expertise, and classroom management skills. Practitioner teachers who complete the required course requirements (or equivalent contact hours) and demonstrate proficiency during their first year of teaching can obtain a Level B Professional License after successfully completing all requirements of the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS) and completing a total of three years of teaching. An exemption from the assessment portion of the Louisiana Teacher Assistance and Assessment Program is provided under specified conditions.

**Title 28**
**EDUCATION**
**Part I. Board of Elementary and Secondary Education**
**Chapter 9. Bulletins, Regulations, and State Plans**
**Subchapter A. Bulletins and Regulations**
**§903. Teacher Certification Standards and Regulations**

A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A(10), (11), (15), R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:760 (April 2002).

**Practitioner Teacher Program**

A. Major Components of the Practitioner Teacher Program

1. Universities, school districts, or private providers (e.g., Teach for America) will be able to offer a Practitioner Teacher Program.

2. Individuals will be considered for admission to a Practitioner Teacher Program if they possess a baccalaureate degree from a regionally-accredited university with a 2.5 or higher GPA* and already possess the content knowledge to teach the subject area(s). To demonstrate knowledge of subject area(s), all individuals (with the exception of those who already possess a graduate degree) will be required to pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) for the PRAXIS. Teachers of grades 1-6 (regular and special education) must pass the *Elementary Education Content Knowledge* specialty examination on the PRAXIS (#0014), and teachers of grades 4-8 (regular and special education) must pass the *Middle School Content Knowledge* specialty examination (#0146). Teachers of grades 7-12 (regular and special education) must pass the *specialty examination* on the PRAXIS in the content area(s) (e.g., English, Mathematics, Science, Social Studies, etc.) in which they intend to be certified. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.)

3. If admitted to the Practitioner Teacher Program, individuals who intend to be certified to teach grades 1-6, 4-8, or 7-12 must successfully complete nine credit hours (or 135 contact hours) of instruction during the summer prior to the first year of teaching. Practitioner teachers will be exposed to teaching experiences in field-based schools while involved in course work.

4. All practitioner teachers will teach during the regular school year in the area(s) in which they are pursuing certification and participate in nine credit hours (or 135 contact hours) of seminars and supervised internship during the fall and spring to address their immediate needs. Practitioner teachers will be observed and provided feedback about their teaching from the program provider. In addition, practitioner teachers will be supported by school-based mentors from the Louisiana Assistance and Assessment Program and by principals.

5. Practitioner teachers who complete the required course requirements (or equivalent contact hours) with a 2.5 or higher GPA and demonstrate *proficiency* during their first year of teaching can obtain a Level B Professional License after successfully completing all requirements for the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS) and after completing a total of three years of teaching.

6. Practitioner teachers who successfully complete the required courses (or equivalent contact hours) and demonstrate *weaknesses* during their first year of teaching will be required to complete from one to twelve additional credit hours/equivalent contact hours. A team composed of the program provider, school principal, mentor teacher, and practitioner teacher will determine the types of courses and hours to be completed. The number of hours, which will be based upon the extent of the practitioner teachers' needs, must be successfully completed within the next two years. The team will also determine when the practitioner teachers should be assessed for the Louisiana Assistance and Assessment Program during the next two year time period. Additionally, for teachers who successfully completed the Louisiana Assistance and Assessment Program prior to entering the Practitioner Teacher Program, the team will determine if the Louisiana Components of Effective Teaching are still being exhibited by the teacher at the "competent" level and, if so, allow by unanimous decision the teacher to be exempted from completing the Assessment part of the Louisiana Assistance and Assessment Program. The practitioner teachers must successfully complete all requirements for the Practitioner Teacher Program (which includes successful completion of the Louisiana Assistance and Assessment Program and passing scores on the PRAXIS in the specialty areas) and must teach for a total of three years before receiving a Level B Professional License.

7. The State's new Teacher Preparation Accountability System will be used to evaluate the effectiveness of all Practitioner Teacher Programs.

B. Structure for a Practitioner Teacher Program

**Program Providers**

Practitioner Teacher Programs may be developed and administered by

universities;

- school districts; and
- other agencies (e.g., Teach for America, Troops for Teachers, Regional Service Centers, etc.).

The same State Teacher Preparation Accountability System will be utilized to assess the effectiveness of the Practitioner Teacher Programs provided by universities, school districts, and other agencies.

**Program Process**

| Areas | Course/Contact Hours | Activities | Support |
|---|---|---|---|
| 1. Admission to Program (Spring and Early Summer) | | Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring.<br><br>To be admitted, individuals must<br><br>a. possess a baccalaureate degree from a regionally accredited university.<br>b. have a 2.5 GPA on undergraduate work. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.)<br>c. pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) on the PRAXIS. (Individuals who already possess a graduate degree will be exempted from this requirement.)<br>d. pass the content specific examinations for the PRAXIS:<br>(1) Practitioner candidates for Grades 1-6 (regular and special education): Pass the *Elementary Education Content Knowledge (#0014)* examination;<br>(2) Practitioner candidates for Grades 4-8 (regular and special education): Pass the *Middle School Content Knowledge* examination (#0146);<br>(3) Practitioner candidates for Grades 7-12 (regular and special education): Pass the *content specialty examination(s)* (e.g., English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.<br>e. meet other non-course requirements established by the program providers. | |

| Areas | Course/Contact Hours | Activities | Support |
|---|---|---|---|
| 2. Teaching Preparation (Summer) | 9 credit hours or 135 equivalent contact hours (5-8 weeks) | All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours).<br>Grades 1-6, 4-8, and 7-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships.<br>Mild/moderate special education teachers will successfully complete courses (or equivalent contact hours) that focus upon the special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods/materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities. | Program Providers |
| 3. Teaching Internship and First Year Support (Fall and Spring) | 9 credit hours or 135 equivalent contact hours throughout the year. (Note: No fewer than 45 contact hours should occur during the fall.) | Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through an internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers (provided by the Louisiana Teacher Assistance and Assessment Program) and principals. | Program Providers, Principals and Mentors |
| 4. Teaching Performance Review (End of First Year) | | Program providers, principals, mentors, and practitioner teachers will form teams to review the first year teaching performance of practitioner teachers and to determine the extent to which the practitioner teachers have demonstrated teaching proficiency If practitioner teachers demonstrate proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment Program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the Assessment part of the Louisiana Assistance and Assessment Program.) If weaknesses are cited, the teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to twelve credit hours (or 1-180 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, the teams will determine whether the practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall. | |
| 5. Prescriptive Plan Implementation (Second Year) | 1-12 credit hours (or 15-180 equivalent hours) | Practitioner teachers who demonstrate areas of need will complete prescriptive plans. | Program Providers |
| 6. Louisiana Assessment Program (Second Year) | | Practitioner teachers will be assessed during the fall or later depending upon their teaching proficiencies. | Program Providers |
| 7. Praxis Review (Second Year) | | Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS. | Program Providers |
| 8. Certification Requirements (Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met within these three years.) | | Program providers will submit signed statements to the Louisiana Department of Education to indicate that the practitioner teachers completed Practitioner Teacher Programs and met the following requirements within a three-year time period:<br>1. passed the PPST components of the PRAXIS. *(Note: This test was required for admission.)*<br>2. completed the Teaching Preparation and Teaching Internship segments of the program with a 2.5 or higher GPA.<br>3. passed the Louisiana Teacher Assistance and Assessment Program.<br>4. completed prescriptive plans (if weaknesses were demonstrated).<br>5. passed the specialty examination (PRAXIS) for their area(s) of certification.<br>a. Grades 1-6: *Elementary Education Content Knowledge Examination #0014 (Note: This test was required for admission)*<br>b. Grades 4-8: *Middle School Content Knowledge Exam #0146 (Note: This test was required for admission.)*<br>c. Grades 7-12: *Specialty content test in areas to be certified*. *(Note: This test was required for admission.)*<br>d. Mild/Moderate Special Education 1-12: *Special Education (to be determined)*<br>6. passed the *Principals of Learning and Teaching* examination (PRAXIS)<br>a. Grades 1-6: *Principles of Learning and Teaching;*<br>b. Grades 5-9: *Principles of Learning and Teaching;*<br>c. Grades 7-12: *Principles of Learning and Teaching.* | |

| Areas | Course/Contact Hours | Activities | Support |
|---|---|---|---|
| 9. Ongoing Support (Second and Third Year) | | Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc. | Program Providers |
| 10. Professional License (Practitioner License to Type B) | | Practitioner teachers will be issued a Practitioner License when they enter the program. They will be issued a Type C Professional License once they have successfully completed all requirements of the program; after three years of teaching they will be eligible for a Type B license. | |

**Undergraduate/Graduate Courses and Graduate Programs**

Universities may offer the courses at undergraduate or graduate levels. Efforts should be made to allow students to use graduate hours as electives if the students are pursuing a graduate degree.

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Weegie Peabody
Executive Director

0204#007

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—PRAXIS/NTE Scores (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. To address the new certification structure that becomes effective in 2002, this policy provides required scores on exams that will serve as admission and exit requirements for teacher certification programs. Two of the added examinations specifically address middle school (grades 4-8), a new certification category. This policy adopts the required scores on three PRAXIS examinations which have been added to the list of NTE/PRAXIS examinations required for teacher certification, as follows: #0014—Elementary Education: Content Knowledge, with a passing score of 147, #0146—Middle School: Content Knowledge, with a passing score of 150; and #0523—Principles of Learning and Teaching 5-9, with a passing score of 154.

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A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6), R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:763 (April 2002).

**PRAXIS/NTE Scores**

Minimum Score Requirements for Certification in Louisiana, Effective 9/1/99

(See next page for NTE tests/scores required for Louisiana certification prior to 9/1/99)[1]

| Area Test | Area Score | Pre-Professional Skills Test PPST:R[2] | PPST:W[2] | PPST:M[2] | Principles of Learning & Teaching PLT K-6 | PLT 5-9[4] | OR | PLT 7-12 |
|---|---|---|---|---|---|---|---|---|
| Administration and Supervision (0410) | 620 | --- | --- | --- | --- | --- | | --- |
| Agriculture[4] | --- | 172 | 171 | 170 | --- | --- | | 161 |
| Art Education[3] | --- | 172 | 171 | 170 | 161 | 154 | or | 161 |
| Biology & General Science (0030) | 580 | 172 | 171 | 170 | --- | --- | | 161 |
| Business Education (0100) | 540 | 172 | 171 | 170 | --- | --- | | 161 |
| Chemistry/Physics/Gen. Science (0070) | 530 | 172 | 171 | 170 | | | | 161 |
| Early Childhood Education (0020) | 510 | 172 | 171 | 170 | 161 | --- | | --- |
| Elementary Education:<br>Curriculum, Instruction, & Assessment (0011)<br>Content Area Exercises (0012) | <br>156<br>137 | 172 | 171 | 170 | 161 | --- | | --- |
| Elementary Education: Content Knowledge (0014)[4] | 147 | 172 | 171 | 170 | 161 | --- | | --- |
| Middle School: Content: Knowledge (0146)[4] | 150 | 172 | 171 | 170 | --- | 154 | | --- |
| English Language, Literature, & Composition:<br>Content Knowledge (0041)<br>Pedagogy (0043) | <br>160<br>130 | 172 | 171 | 170 | --- | --- | | 161 |
| French (0170) | 520 | 172 | 171 | 170 | --- | --- | | 161 |
| German (0180) | 500 | 172 | 171 | 170 | --- | --- | | 161 |
| Home Economics Education (0120) | 510 | 172 | 171 | 170 | --- | --- | | 161 |
| Industrial Arts Education[3] | --- | 172 | 171 | 170 | --- | --- | | 161 |
| Mathematics (0060) | 550 | 172 | 171 | 170 | --- | --- | | 161 |
| Music Education (0110) | 530 | 172 | 171 | 170 | 161 | 154 | or | 161 |
| Physical Education (0090) | 550 | 172 | 171 | 170 | 161 | 154 | or | 161 |
| Social Studies:<br>Content Knowledge (0081)<br>Interpretation of Materials (0083) | <br>149<br>152 | 172 | 171 | 170 | --- | --- | | 161 |
| Spanish (0190) | 540 | 172 | 171 | 170 | --- | --- | | 161 |
| Special Education[3] | --- | 172 | 171 | 170 | 161 | 154 | or | 161 |
| Speech Communications[3] | --- | 172 | 171 | 170 | --- | --- | | 161 |

[1]Individuals who achieved the required NTE score(s) may use those in lieu of the replacement PRAXIS test.

[2]Computer-Based Tests are available as an option.

[3]Area test is not required for certification in Louisiana.

[4]Exam approved 1025//01.

PPST:R[2]– Pre-Professional Skills Test: Reading (0710)
PPST:W[2]– Pre-Professional Skills Test: Writing (0720)
PPST:M[2] – Pre-Professional Skills Test: Mathematics (0730)
PLT K-6 – Principles of Learning & Teaching K-6 (0522)
PLT 5-9[4] – Principles of Learning & Teaching 5-9 (0523)
PLT 7-12 – Principals of Learning & Teaching 7-12 (0524)

Computer-Based Tests:

| | |
|---|---|
| CBT Reading (0711) | 319 |
| CBT Writing (0721) | 316 |
| CBT Mathematics (0731) | 315 |

All newly-adopted Praxis scores used for certification must be sent directly from ETS to the State Department of Education, either through tape transmission or hard copy score reports, effective September 1, 1999.

**NTE SCORES**

NTE Minimum Score Requirements for Certification in Louisiana
Prior to September 1, 1999

| Area Test | Area Score | Core Battery Test CS | GK | PK |
|---|---|---|---|---|
| Administration and Supervision (0410) | 620 | --- | --- | --- |
| Agriculture* | --- | 645 | 644 | 645 |
| Art Education* | --- | 645 | 644 | 645 |
| Biology & General Science (0030) | 580 | 645 | 644 | 645 |
| Business Education (0100) | 540 | 645 | 644 | 645 |
| Chemistry/Physics/General Science (0070) | 530 | 645 | 644 | 645 |
| Early Childhood Education (0020) | 510 | 645 | 644 | 645 |
| Education in Elementary School (0010) | 550 | 645 | 644 | 645 |
| English Language/Literature (0040) | 550 | 645 | 644 | 645 |
| French (0170) | 520 | 645 | 644 | 645 |
| German (0180) | 500 | 645 | 644 | 645 |
| Home Economics Education (0120) | 510 | 645 | 644 | 645 |
| Industrial Arts Education* | --- | 645 | 644 | 645 |
| Mathematics (0060) | 550 | 645 | 644 | 645 |
| Music Education (0110 | 530 | 645 | 644 | 645 |
| Physical Education (0090) | 550 | 645 | 644 | 645 |
| Social Studies (0080) | 550 | 645 | 644 | 645 |
| Spanish (0190) | 540 | 645 | 644 | 645 |
| Special Education * | --- | 645 | 644 | 645 |
| Speech* | --- | 645 | 644 | 645 |

*Area test is not required for certification in Louisiana.
CS = Core Battery: Communication Skills (0500)
GK = Core Battery: General Knowledge (0510)
PK = Core Battery: Professional Knowledge (0520)

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Weegie Peabody
Executive Director

0204#008

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746**C** Louisiana Standards for State Certification of School Personnel**C** Supervisor of Student Teaching (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903. This Bulletin 746 policy removes the necessity for formally adding a certification endorsement for "Supervisor of Student Teaching." Instead, a teacher can qualify to act as a supervisor of student teaching under one of three conditions: (1) a valid Type A Louisiana certificate in the field of supervisory assignment; (2) a valid Type B Louisiana certification in the field of the supervisory assignment and successful completion of a three-credit-hour course in the supervision of student teaching; or (3) a valid Type B Louisiana certificate in the field of the supervisory assignment and successful completion of assessor training through the Louisiana Teacher Assistance and Assessment Program. This action will allow Louisiana teacher education programs more flexibility in assigning student teachers to a qualified supervisor in the field.

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A. Bulletin 746

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825-827 (June 2001), LR 27:827-828 (June 2001), LR 27:828-829 (June 2001), LR 28:765 (April 2002).

**Supervisor of Student Teaching Policy**

A classroom teacher can serve as a supervisor of student teaching if he/she satisfies any one of the following conditions:

1. a valid Type A Louisiana certificate in the field of the supervisory assignment;
2. a valid Type B Louisiana certificate in the field of the supervisory assignment and successful completion of the three-credit-hour course in the supervision of student teaching; or
3. a valid Type B Louisiana certificate in the field of the supervisory assignment and successful completion of assessor training through the Louisiana Teacher Assistance and Assessment Program.

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Weegie Peabody
Executive Director

0204#009

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1891**C** Louisiana's IEP Handbook for Gifted/Talented Students (LAC 28:LV.Chapters 1-11)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted Bulletin 1891, *Louisiana's IEP Handbook for Gifted/Talented Students* (R.S. 17:1941, et seq.). The present revision is being published in codified form; hence historical notes will reflect a history, by section, from this time forward.

*Louisiana's IEP Handbook for Gifted/Talented Students* are the regulations for developing the Gifted/Talented Individualized Education Plan (IEP) for identified Gifted/Talented students in the school districts. Regulations regarding the types of IEPs, timelines, participants, school district responsibilities, and due process procedures are

included. The development of *Louisiana's IEP Handbook for Gifted/Talented Students* is the result of the adoption of *Regulations for Implementation of Children with Exceptionalities Act, Subpart B, Regulations for Gifted/Talented Students* in August 2000 which separated the regulations for the disabled from the regulations for the gifted/talented.

**Title 28**
**EDUCATION**
**Part LV. Bulletin 1891C Louisiana's IEP Handbook for Gifted/Talented Students**

**Chapter 1. Purpose**

**§101. Introduction**

A. *Louisiana's IEP Handbook for Gifted/Talented Students*, revised 2001, provides information regarding the Individualized Education Program (IEP), the basis for educational programming for G/T students in Louisiana. The handbook describes the IEP process and the legal procedures involved as mandated by Revised Statute 17:1941, et seq., and its regulations. This handbook outlines mandatory procedures. It serves as a training vehicle for interested parties in the effort to improve the quality of Gifted/Talented IEPs in Louisiana.

B. A separate IEP form described in the handbook must be used for all students identified as gifted and talented, with the exception of students, gifted and/or talented who have an identified disability.

C. Any student with a disability as identified in the *Pupil Appraisal Handbook* and identified as gifted/talented will use the IEP for students with a disability to develop his/her individualized educational program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

**Chapter 3. Types of IEPs**

**§301. The IEP and evaluation/re-evaluation of G/T students.**

A. The IEP process is one intertwined with the process of evaluation and re-evaluation of G/T students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

**§303. The Four Types of IEPs**

A. The INTERIM IEP may be developed for students who have been receiving special educational services in another state concurrent with the conduct of an evaluation. An interim IEP may also be developed for students out of school, to age 22, who have left a public school before obtaining a state diploma.

B. The INITIAL IEP is developed for a G/T student who has met criteria for one or more exceptionalities outlined in the *Pupil Appraisal Handbook* and who has never received special educational services, except through an interim IEP, from an approved Louisiana school/program.

C. The REVIEW IEP is reviewed and revised at least annually or more frequently to consider the appropriateness of the program, placement, and any related services needed by the student.

D. The DECLASSIFIED IEP is developed when a student's reevaluation determines the student is no longer exceptional. This IEP allows the student to receive special educational services for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

**Chapter 5. Initial IEP Development**

**§501. Responsibilities**

A. A student is initially determined to be exceptional through the individual evaluation process. The responsibility for making a formal commitment of resources to ensure a free, appropriate public education (FAPE) for a student identified as exceptional rests with the local education agency (LEA) in which the student resides. Note: Louisiana Revised Statute 17:1941 et seq., clearly indicates that while the local educational agency must locate and identify all students who meet the criteria for gifted/talented, the LEA is not responsible for providing FAPE to gifted/talented students whose parents have voluntarily enrolled the student in a private school.

B. The LEA is responsible for initiating the assurance of FAPE regardless of whether the system will:

1. provide all of the service directly or through interagency agreements;
2. place the student in another system or in a nonpublic facility; or
3. refer the student to another LEA for educational purposes.

C. The responsibility for offering FAPE is met through the process of developing an initial IEP. This process includes:

1. communication between the LEA and the parents;
2. IEP meeting(s) at which parents and school personnel make joint decisions and resolve any differences about the student's needs and services;
3. a completed IEP/placement document, which describes the decisions made during the meeting(s), including special education and related services that are to be provided;
4. a formal assurance by the LEA that the services described in the document will be provided;
5. parental consent for initial placement;
6. procedural safeguards for differences that cannot be resolved mutually; and
7. initial placement and provision of services as described in the IEP/placement.

D. The LEA is required to offer FAPE to those G/T students whose ages fall between 3 and 21 years.

1. The responsibility for providing services to a G/T student continues until:
   a. the student receives a State diploma; or
   b. the student reaches his or her twenty-second birthday. (If the twenty-second birthday occurs during the course of the regular school session, the student shall be allowed to remain in school for the remainder of the school year.
2. The LEA is not responsible for providing FAPE if, after carefully documenting that the agency has offered FAPE via an IEP, the parents choose to enroll the student voluntarily elsewhere or indicate their refusal of special educational services. Documentation of these parental decisions should be kept on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:766 (April 2002).

**§503. Timelines**

A. An initial evaluation is considered "completed" when the written report has been disseminated by the pupil appraisal staff to the administrator of special education programs. A LEA has a maximum of 30 calendar days after the completion of the evaluation to complete the IEP/placement document for an eligible student. During this time, two activities must take place and be documented.

1. Written Notice(s) that the LEA proposes to provide FAPE through the IEP process must be given to the parents. The notice(s) must be provided in the parents' native language or must be given using other means of communication, whenever necessary, to assure parental understanding.

2. The notice(s) must indicate the purpose, time, and location of the IEP meeting; who will be in attendance; the parents' right to take other participants to the meeting; the student's right to participate (when appropriate); and the name of the person in the LEA the parents can contact if and when they have questions or concerns.

3. The notice(s) must explain the procedural safeguards available to the parents: that they can negotiate the time and place of the IEP meeting, that they have the right to full and meaningful participation in the IEP decision-making process, that their consent is required before initial placement will be made, and that all information about the student shall be kept confidential.

4. Additionally, if the LEA has not already done so, the system must inform the parents of their right to an oral explanation of the evaluation report and of their right to an independent education evaluation (IEE) if the parents disagree with the current evaluation.

B. An IEP meeting(s) that results in a completed IEP/placement document must be held. The IEP meeting(s) should be a vehicle for communication between parents and school personnel to share formal and informal information about the student's needs, educational projections, and services that will be provided to meet the student's needs. The completed IEP/placement document is a formal record of the IEP team's decisions. The timeline for completion of the document is intended to ensure that there is no undue delay in providing a free, appropriate public education (FAPE) for the student. The document is "completed" when the form has been completed and signed by the LEA's officially designated representative.

Additional Notes About Timelines

Summer Recess. When an initial evaluation report has been completed within the 30 days prior to the summer recess or during the recess, the LEA may request, through written documentation, parental approval to delay the initial IEP meeting until the first week of the next school session. However, if the parents wish to meet during the summer recess, the LEA must ensure that the appropriate IEP team members are present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:767 (April 2002).

**§505. Participants**

A. At any initial IEP meeting, the following participants must be in attendance: an officially designated representative of the LEA, the student's regular education and special education teachers, the student's parent(s), and a person knowledgeable about the student's evaluation procedures and results. The student, as well as other individuals the parents and/or LEA may deem necessary, should be given the opportunity to attend. Documentation of attendance is required.

1. An officially designated representative of the LEA (ODR) is one who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of G/T students, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the LEA. The LEA may designate another LEA member of the IEP team to serve also as the agency representative, if the above criteria are satisfied. A special education teacher cannot serve as the ODR for a child's IEP if he/she is also the child's teacher. A LEA must have on file and must disseminate within the agency a policy statement naming the kinds of persons who may act as the official representative of the LEA. Representatives may include the director/supervisor of special education, principals, instructional strategists, teachers, or any other LEA employee certified to provide or supervise special educational services. A member of the student's evaluation team may serve in this capacity.

2. Parents are equal participants in the IEP process in discussing the educational and related services needs of the student and deciding which placement and other services are appropriate. As such, one or both of the student's parents should participate in the initial IEP/placement meeting(s). Other team members must rely on parents' to contribute their perspective of the student outside of school. Parental insight about the student's strengths and support needs, learning style, temperament, and ability to work in various environments is of vital importance to the team in making decisions about the student's needs and services. The concerns of the parents for enhancing the education of their child must be documented in the IEP.

NOTE 1: *Parent* is defined as a natural or adoptive parent of a child; a guardian, but not the State if the child is ward of the State; a person acting in the place of a parent of a child (such as a grandparent or stepparent with whom the child lives or a person who is legally responsible for the child's welfare); or a surrogate parent who has been appointed. A foster parent may qualify as a "parent" when the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law, and the foster parent has an ongoing, long-term parental relationship with the child; is willing to participate in making educational decisions in the child's behalf; and has no interest that would conflict with the interests of the child.

B. The LEA must take measures to ensure that parents and all other team members, including sensorially impaired and non-English-speaking participants, can understand and actively participate in discussions and decision-making. These measures (i.e., having an interpreter or translator) should be documented. Local education agencies shall further ensure that, for those parents who cannot physically attend the IEP meeting(s), every effort is made to secure parental participation. After documenting attempts to arrange

a mutually convenient time and place, several possibilities remain.

1. The meeting(s) may be conducted via telephone conference calls.

2. The IEP team may consider parental correspondence to the school regarding the student's learning environment, any notes from previous parental conferences, and any data gathered during the screening and evaluation period.

3. Visits may be made to the parents' home or place of employment to receive parental suggestions.

4. If, however, every documented attempt fails and the IEP/placement document is developed without parental participation, the parents still must give written informed consent for initial placement before any special education services may begin.

NOTE 2: When a G/T student has a legal guardian or has been assigned a surrogate parent by the LEA, that person assumes the role of the parent during the IEP process in matters dealing with special educational services. When a G/T student is emancipated, parental participation is not mandated. Additionally, if the LEA has been informed that a parent is legally prohibited from reviewing a student's records, that parent may not attend the IEP meeting(s) without permission of the legal guardian.

NOTE 3: Beginning at least one year before the student reaches the age of majority, the parents will be informed that the rights under state statute will transfer to the student.

C. An evaluation representative is a required participant at an initial IEP meeting. The person may be a member of the pupil appraisal team that performed the evaluation or any person knowledgeable about and able to interpret the evaluation data for that particular student.

D. A regular education teacher is at least one of the student's regular teachers (if the student is, or may be, participating in the regular education environment). The teacher must, to the extent appropriate, participate in the development, review, and revision of the student's IEP.

1. Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

E. A special education teacher is at least one of the student's special education teachers, or when appropriate, at least one special education provider of the student.

F. The student should be given the opportunity to participate in the development of the IEP. In many cases, the student will share responsibility for goals and objectives.

1. Beginning at least one year before the student reaches the age of majority, by the student's seventeenth birthday, the student must be informed that his or her rights under state statute will transfer to him or her.

G. Other individuals may be invited, at the discretion of the parent or LEA, who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The LEA also must inform the parents of the right of both the parents and the agency to invite other individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate to be members of the IEP team. The LEA may recommend the participation of other persons when their involvement will assist the decision-making process.

1. It is also appropriate for the LEA to ask the parents to inform the LEA of any individuals the parents will be taking to the meeting. Parents are encouraged to let the LEA know whom they intend to take. Such cooperation can facilitate arrangements for the meeting and help ensure a productive, child-centered meeting.

NOTE: The determination of the knowledge or special expertise of any individual described above shall be made by the parent or LEA, whoever invited the individual to be a member of the IEP team.

H. When the LEA responsible for the initial IEP/placement process considers referring or placing the student in another LEA, the responsible LEA must ensure the participation of a representative of the receiving system at the IEP meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:767 (April 2002).

**§507. Placement Decisions**

A. The IEP team has the responsibility for determining the special education needs and placement for a G/T student. Program decisions must be in made and written on the IEP in the following areas that form the basis for the placement:

1. the student's strengths and support needs;

2. the concerns of the parents for enhancing the education of their child;

3. the results of the initial evaluation or most recent reevaluation of the student;

4. as appropriate, the results of the student's performance on any general state or district-wide assessment program;

5. the student's present levels of educational performance;

6. in the case of a student with limited English proficiency, whose language needs relate to the student's IEP;

7. the measurable annual goals, including benchmarks or short-term objectives, related to:

a. meeting the student's needs that result from the student's exceptionality and progress in an accelerated and enriched curriculum;

b. meeting each of the student's other educational needs that result from the student's exceptionality; and

c. appropriate activities for the preschool-aged student;

8. a statement of related services and program modifications for school personnel that will allow the student to advance appropriately toward the annual goals;

9. the explanation of the extent, if any, to which the student will not participate with students in the regular class and extracurricular and other nonacademic activities;

10. any individual modifications and/or accommodations in the administration of State or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment as documented by an attached Section 504 Plan;

11. and the anticipated frequency, location, and duration of the special education services and modifications.

B. The IEP team, following a discussion of the student's educational needs, must choose a setting(s) in which the educational needs will be addressed. The term placement refers to the setting or class in which the student will receive special educational services.

C. Placement decisions for students whose ages are 6-21. For the location of instruction/ services, IEP team members should consider the following.

1. Where would the student attend school if he or she did not have an exceptionality?

2. Based on IEP goals and objectives or benchmarks, what the instructional setting(s) would support the achievement of these goals and objectives or benchmarks?

D. For students aged 6-21. Utilizing the above information, the IEP team should choose the most appropriate setting from the continuum below:

1. regular classroom (less than 21 percent of the day outside the regular class);

2. resource with regular classes (at least 21 percent, but no more than 60 percent of the day outside the regular class);

3. self-contained class on a regular campus (more than 60 percent of the day outside the regular class.

E. For students aged 3-5. In determining the appropriate setting for a preschool-aged student, each noted setting must be considered; but the list should not be considered a continuum of least restrictive environment. The settings for preschool-aged students, three through five years, are defined as follows.

1. Regular Preschool Placement**C**Head Start, Title 1, kindergarten, pre-kindergarten, child care center, Even Start, 4 year-old at-risk program, or any other program designed for children.

2. Self-Contained**C**A preschool class, or any other program designed for exceptional children.

F. The official designated representative shall be knowledgeable about placement considerations and shall be responsible for informing the IEP team members. The IEP team must participate in decisions made about the placement; however, the LEA has the right to select the actual school site in view of committee decisions.

NOTE: See Section 2 for the complete instructions for writing the IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:768 (April 2002).

### §509. Additional Clarification

A. Although throughout Louisiana most exceptional students are served in their neighborhood schools, there are some extenuating circumstances that impact the decision to serve a student in a school other than his or her neighborhood school.

B. The following is provided as an example: A Resource Center for Gifted/Talented is a type of instructional setting, designed or located in one school, that provides instructional services to students who are gifted/talented from two or more schools and in which special education is provided by an individual certified in accordance with *Bulletin 746*; pupil/teacher ratios established in *Bulletin 1706 G/T* are used; instructional time is not less than two and one-half hours per week.

C. In addition to the questions on the IEP and Site Determination Form, the following issues must be considered:

1. students should be placed in programs on the basis of their unique needs;

2. placement cannot be based on either a particular local education agency's special education delivery system or on the availability of related services;

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §511. Related Services Decisions

A. If an identified gifted/talented student needs related services including transportation, or counseling, then the IEP should address these concerns on the IEP document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §513. Accommodations/Modifications for LEAP Testing

A. G/T students shall be included in the Louisiana Educational Assessment Program with appropriate accommodations and modifications in administration. These accommodations and modifications should be incorporated in the student's educational program throughout the year. The Section 504 Plans should be attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §515. Parental Consent

A. A LEA must obtain formal parental consent before it can initially provide a student with special education in any setting. Consent includes the following:

1. the parent and/or student has been fully informed of all relevant information in a manner that is clearly understandable to the parent and/or student; and

2. the parent and/or student formally agree/agrees in writing.

B. After the parent and/or student have/has given written consent, the IEP is in effect. The parent and/or student must be provided a completed copy of the IEP/placement document signed by the official designated representative of the LEA.

NOTE: The student's consent is needed once the student reaches the "age of majority."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

### §517. Parental Withholding of Consent

A. Parents may disagree with all or some part(s) of the initial program, placement, or related services proposals. The LEA and the parents should make conciliatory attempts to resolve the disputes, including making modifications to the proposed program, placement, and related services. A LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:769 (April 2002).

**§519. Mediation**

A. Mediation is an informal, voluntary process by which the parent and the LEA are given an opportunity, through the help of a trained mediator, to resolve their differences and find solutions to enhance the overall learning environment for the student. Differences may arise in the planning and implementing of programs for exceptional students. It is important for parents and LEAs to have an opportunity to present their viewpoint in a dispute.

NOTE: See Louisiana's Educational Rights of Gifted/Talented Children in Public Schools and the Mediation Services for Students with Exceptionalities brochure for more information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

**§521. Due Process**

A. The parents and the LEA both have the right to an "impartial due process hearing" when disagreements arise between the parent and the LEA relative to initiating or changing the identification, evaluation, or educational placement of a student with an exceptionality. Due process hearings may be initiated by the parent or the LEA.

B. See Louisiana's Rights of Gifted/Talented Children in Public Schools and the Mediation Services for Students with Exceptionalities brochure for more information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

**§523. Implementation of the IEP**

A. Implementation of the IEP means that the student begins participating in the special education placement and related services as written on the IEP/placement document. A LEA must begin providing services as stated on the IEP within 10 calendar days. The date of initiation of services shall be noted on the IEP. When meetings occur during the summer or other vacation periods, a delay may occur. When meetings to develop the initial IEP/placement document occur just prior to the summer vacation, the date of implementation of services may be delayed to the beginning of the next school year if the parent(s) agree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

## Chapter 7. Review IEP Development

**§701. Responsibilities and Timelines**

A. A LEA is required to initiate and conduct IEP meetings periodically, but not less than annually, to review each student's IEP in order to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate. The LEA must notify parents of the review IEP meeting or the review/reevaluation IEP meeting in accordance with the same procedures as the initial IEP.

B. An additional IEP/placement review meeting is not required when a LEA elects to move the student to another school site within the agency when all of the information on the IEP remains the same and the effect of the program has not been changed.

C. The IEP team should:

1. review the student's progress toward achieving the annual goals and objectives/benchmarks;
2. review the student's progress in the general education curriculum;
3. discuss any lack of expected progress toward the annual goals and in the general education curriculum;
4. review the results of the student's performance on any State or district-wide assessment;
5. review the results of any reevaluation;
6. review information about the child provided to, or by, the parents;
7. discuss the student's anticipated needs;
8. review the student's special educational needs; for the preschool-aged child, address his or her developmental needs;
9. make updated decisions about the student's program and placement;
10. in making decisions for location of instruction/services, refer to pages 12-14 of this handbook for guidance;
11. any other concerns.

D. A review meeting must be conducted in addition to the required annual review when:

1. a student's teacher feels the student's IEP or placement is not appropriate for the student; or
2. the student's parents believe their child is not progressing satisfactorily or that there is a problem with the student's IEP; or
3. the LEA proposes any changes regarding program or placement, such as to modify, add, or delete a goal or objective; to add or delete a related service; or
4. either a parent or a public agency believes that a required component of the student's IEP should be changed; or
5. the LEA must conduct an IEP meeting if it believes that a change in the IEP may be necessary to ensure the provision of FAPE; or
6. a hearing officer orders a review of the student's IEP/placement document;
7. an out-of-district placement or referral is being proposed.

NOTE: A review IEP meeting must be conducted as part of the reevaluation process.

E. In the cases listed above, it may not be necessary to rewrite the entire IEP/placement document. However, the following documentation must be provided:

1. signatures of the team members;
2. the date of the meeting;
3. the changes made in the IEP; and
4. the dated signatures of the official designated representative of the system and the parent who authorized the change.

F. In the case in which the IEP/placement document is entirely rewritten, the date of that meeting shall become the anniversary date for the next annual review meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

**§703. Participants**

A. The LEA must ensure there is attendance by an officially designated representative of the system, the

student's regular education and special education teachers, the parents, and the student, as appropriate. At the discretion of the parent(s) or the LEA, other individuals who have knowledge or special expertise regarding the student may attend. A representative of another LEA or approved facility may be included if a placement in or referral to another LEA is proposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:770 (April 2002).

**§705. Placement Decisions**

A. The IEP team must address the placement of the student according to the same placement guidelines required for an initial IEP meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

**Chapter 9. Declassified IEP Development**

**§901. Responsibilities and Timelines**

A. Following the receipt of a re-evaluation that indicates no exceptionality for a student currently enrolled in special education, the LEA has two options. The LEA may:

1. place the child in regular education after obtaining formal parental approval; or

2. recommend a declassified special education program.

B. When the declassified program is chosen, an IEP meeting must be held and conducted in accordance with all the guidelines required for a review meeting. This IEP may be in effect for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

**§903. Placement Decisions**

A. The declassified IEP provides the student with a systematic, structured program for moving into regular education. The declassified program shall include regular education in combination with special educational services. The IEP team should discuss and document on the IEP the systematic plan for the student's full integration into regular classes by the end of the specified time. This plan may be documented by indicating a decreasing range of time in special classes during the year and/or by writing goals and objectives that indicate a gradually reduced special support system for the student. Such documentation will remove the necessity to reconvene the IEP team during the year as the placement gradually changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

**Chapter 11. Interim IEP Development**

**§1101. Responsibilities and Timelines**

A. The interim IEP provides a basis on which the student may begin to receive special educational and related services and provides an appraisal program to gather assessment data for the individual evaluation process.

B. A student must be offered enrollment in a LEA. This enrollment process, from initial entry into the LEA to placement, shall occur within 10 school days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

**§1103. Placement Decisions**

A. Local supervisors of special education may approve enrollment in special education after existing student information has been reviewed by pupil appraisal personnel. An interim IEP would be developed and formal parental approval obtained. The interim IEP remains in effect as long as the evaluation is in process and may be revised as necessary. During this time all regulations pertaining to gifted/talented students shall apply. The interim IEP shall not exceed the duration of the evaluation.

B. Often, discussion about the current performance, goals, and objectives for the student will have to be conducted without the benefit of integrated assessment data or teacher observation.

C. To gather information about current performance, the parent may be the prime source of information about the student's skills, development, motivation, learning style, etc.

D. The goals and objectives should address the student's educational program during the assessment process.

E. When available information indicates that related services are required, services should be provided.

F. The student's performance during an interim placement must be documented by the teacher and pupil appraisal personnel. This documentation should provide meaningful data for determining an appropriate program and placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

**§1105. Parental Consent**

A. Parental consent for the interim placement and related services must be obtained by parental signature on the IEP form.

B. Parents should be informed that the student will exit from the special educational program if the student is found to be ineligible for special educational services according to the criteria of the Pupil Appraisal Handbook.

C. If the student is eligible for special educational services, an initial IEP/placement meeting will be conducted within 30 calendar days from the date of dissemination of the written evaluation to the LEA's special education administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:771 (April 2002).

Weegie Peabody
Executive Director

0204#010

## RULE

### Student Financial Assistance Commission
### Office of Student Finanical Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 703, 705, 803, 805, 903, 907, 911, 1103, 1111, 1903, 2103, 2105, 2107, 2303, and 2309)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

### Title 28
### EDUCATION
### Part IV. Student Financial Assistance C Higher Education Scholarship and Grant Programs

### Chapter 3. Definitions

### §301. Definitions

* * *

*Academic Year (High School)* **C** the annual academic year for high school begins on September 1 of the fall term, includes the winter, spring, and summer terms and ends on the next August 31. This definition is not to be confused with the Louisiana Department of Education's definition of school year, which is found in Louisiana Department of Education Bulletin 741.

* * *

*Skill and Occupational Training* **C** training defined by the Louisiana Board of Regents to be for skill and occupational training. Currently, the Board of Regents defines "skill and occupational training" as follows:

1. any and all certificate, diploma, Associate of Applied Technology, and Associate of Applied Science programs offered by eligible colleges/universities; and

2. any coordinated and comprehensive course of study offered by eligible colleges/universities which qualifies a student upon completion to sit for testing leading to and/or meeting national and/or state professional/occupational licensure and/or certification requirements.

With regard to (1) above, eligible programs must be listed in the Board of Regents Inventory of Degree and Certificate Programs.

With regard to (2) above, submit the Board of Regents form to the Associate Commissioner for Academic Affairs for review and approval of each proposed course of study. Approved courses of study shall be compiled into a registry and reported to the Office of Student Financial Assistance for their use in determining the eligibility of students who apply for TOPS-Tech awards under provisions of this Act. Students enrolled in skills or occupational courses of study not included in the aforementioned registry shall be judged ineligible for TOPS-Tech awards.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR28:45 (January 2002), LR 28:45 (January 2002), LR 28:772 (April 2002).

### Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

### §703. Establishing Eligibility

A. …

1. Be a U. S. citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U. S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided and canceled if such proof is not provided by May 1 of the following Academic Year (College).

2. - 6.c. ...

7. not have a criminal conviction, except for misdemeanor traffic violations, and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

8. agree that awards will be used exclusively for educational expenses.

B. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002).

### §705. Maintaining Eligibility

A. - A.2. ...

3. not have a criminal conviction, except for misdemeanor traffic violations and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

4. agree that awards will be used exclusively for educational expenses; and

5. continue to enroll and accept the TOPS award as a full-time undergraduate student in an Eligible College or University defined in §301, and maintain an enrolled status throughout the academic term, unless granted an exception for cause by LASFAC; and

6. Minimum Academic Progress:

a. in an academic program at an Eligible College or University, by the end of each Academic Year (College), earn a total of at least 24 college credit hours as determined

by totaling the earned hours reported by the institution for each semester or quarter in the Academic Year (College). These hours shall include remedial course work required by the institution, but shall not include hours earned during Qualified Summer Sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

b. in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree at an Eligible College or University, maintain Steady Academic Progress as defined in §301 and by the end of the spring term, earn a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale. Unless granted an exception for cause by LASFAC, failure to maintain Steady Academic Progress and to earn a 2.50 at the conclusion of the spring term will result in permanent cancellation of the recipient's eligibility; and

7. maintain Steady Academic Progress as defined in §301; and

8. maintain at an Eligible College or University, by the end of the spring semester, quarter, or term, a cumulative college grade point average (GPA) on a 4.00 maximum scale of at least:

a. a 2.30 with the completion of less than 48 credit hours, a 2.50 after the completion of 48 credit hours, for continuing receipt of an Opportunity Award, if enrolled in an academic program; or

b. a 2.50, for continuing receipt of an Opportunity Award, if enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree; and

c. a 3.00 for continuing receipt of either a Performance or Honors Award; and

9. has not enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree after having received a vocational or technical education certificate or diploma, or a non-academic undergraduate degree; and

10. has not received a baccalaureate degree; and

11. has not been enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree for more than two years.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:772 (April 2002).

## Chapter 8. TOPS-TECH Award

### §803. Establishing Eligibility

A. To establish eligibility for the TOPS-TECH Award, the student applicant must meet the following criteria:

1. be a U. S. citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U. S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided and canceled if such proof is not provided.

A.2. - 6.a.i. ...

ii. For students graduating in the 2000-2001 school year and thereafter, the high school course work constituting the following TOPS-TECH core curriculum:

Core Curriculum -TOPS-TECH Award

| Units | Course |
|---|---|
| 1 | English I |
| 1 | English II |
| 1 | English III |
| 1 | English IV or substitute one unit of Business English. |
| 1 | Algebra I; or both Algebra I, Part 1 and Algebra I, Part 2; or both Applied Mathematics I and Applied Mathematics II. |
| 2 | Geometry, Applied Mathematics III, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Discrete Mathematics, or Probability and Statistics (two units). Integrated Mathematics I, II, and III may be substituted for Algebra I, Geometry and Algebra II, and shall be considered the equivalent of the three required math units. |
| 1 | Biology. |
| 1 | Chemistry or Applied Chemistry. |
| 1 | Earth Science, Environmental Science, Physical Science, Integrated Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology. |
| 1 | American History. |
| 1 | World History, Western Civilization, or World Geography. |
| 1 | Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic). |

Remaining core courses shall be selected from one of the following options:

| | |
|---|---|
| OPTION 1 | Total of 17 units. |
| 1 | Fine Arts Survey or substitute two units of performance courses in music, dance, or theater; or substitute two units of visual art courses; or substitute two units of studio art courses; or a course from the career and technical program of studies that is approved by the BESE (must be listed under the Vocational Education Course Offerings in Bulletin 741 or the updates to Bulletin 741); or substitute one unit as an elective from among the other subjects listed in this core curriculum. |
| 2 | Foreign Language, Technical Writing, Speech I or Speech II. |
| 1 | One unit from the secondary computer education program of studies that is approved by the BESE. |
| OR | |
| OPTION 2 | Total of 19 Units |
| 4 | In a career major comprised of a sequence of related specialty courses. In order for a student to use this option, the courses for the career major must be approved by BESE. |
| 1 | Credit in a basic computer course. |
| 1 | In related or technical fields. A related course includes any course which is listed under the student's major. A technical course is one that is listed in the approved career option plan for the high school at which the course is taken. |

or

iii. ...

A.6.b.-A.8. ...

9. not have a criminal conviction, except for misdemeanor traffic violations, and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

10. agree that awards will be used exclusively for educational expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65, 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), LR 27:1854 (November 2001), LR 28:773 (April 2002).

**§805. Maintaining Eligibility**

A. - A.2. ...

3. not have a criminal conviction, except for misdemeanor traffic violations and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

4. agree that awards will be used exclusively for educational expenses; and

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the school term, unless granted an exception for cause by LASFAC; and

6. has not received a vocational or technical education certificate or diploma, or a non-academic undergraduate degree, or a baccalaureate degree; and

7. has maintained Steady Academic Progress as defined in §301; and

8. maintain, by the end of the spring term, a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002).

## Chapter 9. TOPS Teacher Award

**§903. Establishing Eligibility**

A. - A.5. ...

6. not have a criminal conviction, except for misdemeanor traffic violations; and

7. agree that the award will be used exclusively for educational expenses; and

8. enroll during the fall term at an eligible college or university, as defined in §1901, as a full-time student, as defined in §301, in a degree program or course of study leading to a degree in education or an alternative program leading to regular certification as a teacher at the elementary or secondary level in mathematics or chemistry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by Office of Student Financial Assistance, Student Financial Assistance Commission LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1857 (November 2001), amended LR 28:774 (April 2002).

**§907. Maintaining Eligibility**

A. - A.7. ...

8. have no criminal convictions, except for misdemeanor traffic violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 25:1092 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), repromulgated LR 27:1857 (November 2001), amended LR 28:774 (April 2002).

**§911. Discharge of Obligation**

A. - C.1. ...

2. interest on each disbursement will accrue from the date of entering repayment status until repaid, canceled or fulfilled;

C.3. - D. 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), amended LR 26:69 (January 2000), LR 26:1603 (August 2000), LR 27:1858 (November 2001), LR 28:774 (April 2002).

## Chapter 11. Rockefeller State Wildlife Scholarship

**§1103. Establishing Eligibility**

A. To establish eligibility, the student applicant must meet all of the following criteria:

1. - 4. ...

5. not have a criminal conviction, except for misdemeanor traffic violations; and

6. agree that award proceeds will be used exclusively for educational expenses; and

7. be enrolled or accepted for enrollment as a full-time undergraduate or graduate student at a Louisiana public college or university majoring in forestry, wildlife or marine science, with the intent of obtaining a degree from a Louisiana public college or university offering a degree in one of the three specified fields; and

8.a. must have graduated from high school, and if at the time of application the student applicant has earned less than 24 hours of grad ed college credit since graduating from high school, have earned a minimum cumulative high school grade point average of at least 2.50 calculated on a 4.00 scale for all courses completed in grades 9 through 12 and have taken the ACT or SAT and received test score results; or

b. if, at the time of application, the student applicant has earned 24 or more hours of college credit, then the applicant must have at least a 2.50 cumulative college grade point average.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:639 (April 1998), amended LR 24:1908 (October 1998), LR

27:1220 (August 2001), repromulgated LR 27:1859 (November 2001), amended LR 28:774 (April 2002).

**§1111. Discharge of Obligation**

A. - C.1. ...

2. interest on each disbursement will accrue from the date of entering repayment status until repaid, canceled or fulfilled;

C.3. - D. 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1860 (November 2001), amended LR 28:775 (April 2002).

## Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

**§1903. Responsibilities of Postsecondary Institutions**

A. - B.1. ...

2. institutions will bill LASFAC based on their certification that the recipient of a TOPS Award is enrolled full-time, as defined in §301, at the end of the fourteenth class day for semester schools and the ninth class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the full summer session). Institutions shall not bill for students who are enrolled less than full-time at the end of the fourteenth class day for semester schools or the ninth class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the summer session), unless the student qualifies for payment for less than full-time enrollment as defined in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment after the fourteenth or ninth class day the fourteenth or ninth class day, as applicable, shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures; and

B.3. - D.2. ...

3. release award funds by crediting the student's account within 14 days of the institution's receipt of funds or disbursing individual award checks to recipients as instructed by LASFAC. Individual award checks for the Rockefeller State Wildlife Scholarship, and TOPS Teacher Award must be released to eligible recipients within 30 days of receipt by the school or be returned to LASFAC.

E. - E.2. ...

3. cumulative grade point average; and

4. upon graduation, degree date and type and name of degree.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission Office of Student Financial Assistance, LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), LR 27:1864 (November 2001), LR 28:775 (April 2002).

## Chapter 21. Miscellaneous Provisions and Exceptions

**§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements**

A. - B. ...

C. Less Than Full-Time Attendance. LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards, the TOPS-TECH Award and the Rockefeller State Wildlife Scholarship, for less than full-time enrollment provided that the student meets all other eligibility criteria and at least one of the following:

1. - 3. ...

D. Procedure for Requesting Exceptions to the Initial and Continuous Enrollment Requirement

1. The student should complete and submit an application for an exception, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. Through the 2000-2001 academic year, the student must submit application for an exception no later than May 30 of the academic year the student requests reinstatement. Commencing with the 2001-2002 academic year, the student must submit the application for exception no later than six months after the date of the notice of cancellation. The deadline for filing the exception shall be prominently displayed on the notice of cancellation.

2. - 3. ...

E. Qualifying Exceptions to the Initial and Continuous Enrollment Requirement

1. A student who has been declared ineligible for TOPS, TOPS-Tech, TOPS Teacher or the Rockefeller State Wildlife Scholarship because of failure to meet the initial or continuous enrollment requirements may request reinstatement in that program based on one or more of the following exceptions:

E.1.a. – E.11.a.i.(f). ...

(g). Claims of receipt of advice that is contrary to these rules, public information promulgated by LOSFA, award letters, and the Rights and Responsibilities document that detail the requirements for full-time continuous enrollment.

E.11.a.i.(h). - E.11.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), LR 27:1875 (November 2001), LR 27:1866 (November 2001), LR 28:45 (January 2002), LR 28:46 (January 2002), LR 28:775 (April 2002).

**§2105. Repayment Obligation, Deferment and Cancellation**

A. ...

B. Deferment of Repayment Obligation. Recipients of the Rockefeller State Wildlife Scholarship or TOPS Teacher Award who are in repayment status may have their payments deferred for the following reasons.

1. Parental Leave

a. Definition. The recipient is pregnant or caring for a newborn or newly-adopted child less than one year of age.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, and

ii. a written statement from a doctor of medicine who is legally authorized to practice certifying the date of diagnosis of pregnancy and the anticipated delivery date or the actual birth date or a copy of the hospital's certificate of live birth or a copy of the official birth certificate or equivalent official document or written documentation from the person or agency completing the adoption that confirms the adoption and date of adoption.

c. Maximum length of deferment**C**up to one year per child.

2. Physical Rehabilitation Program

a. Definition. The recipient is receiving rehabilitation in a program prescribed by a qualified medical professional and administered by a qualified medical professional.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form including the reason for the rehabilitation, dates of absence from work, the number of days involved, and any other information or documents, and

ii. a written statement from a qualified medical professional describing the rehabilitation, including the diagnosis, the beginning date of the rehabilitation, the required treatment, and the length of the recovery period.

c. Maximum Length of Deferment. Up to two years per occurrence.

3. Substance Abuse Rehabilitation Program

a. Definition. The recipient is receiving rehabilitation in a substance abuse program prescribed by a qualified professional and administered by a qualified professional.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, the reason for the rehabilitation, dates of absence from work, the number of days involved, and any other information or documents, and

ii. a written statement from a qualified professional describing the rehabilitation, including the diagnosis, the beginning date of the rehabilitation, the required treatment, and the length of the recovery period.

c. Maximum Length of Deferment. Up to one year. This deferment shall be available to a recipient only one time.

4. Temporary Disability

a. Definition. The recipient is recovering from an accident, injury, illness or required surgery, or the recipient is providing continuous care to his/her spouse, dependent, parent, stepparent, or guardian due to an accident, illness, injury or required surgery.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, the reason for the disability, dates of absence from work, the number of days involved, and any other information or documents, and

ii. a written statement from a qualified professional of the existence and of the accident, injury, illness or required surgery, including the dates of treatment, the treatment required, the prognosis, the length of the recovery period, the beginning and ending dates of the doctor's care, and opinions as to the impact of the disability on the recipient's ability to work; and

iii if a temporary disability of another, a statement from the family member or a qualified professional confirming the care given by the recipient.

c. Maximum Length of Deferment. Up to two years for recipient; up to a maximum of one year for care of a disabled dependent, spouse, parent, or guardian.

5. Religious Commitment

a. Definition. The recipient is a member of a religious group that requires the recipient to perform certain activities or obligations which necessitate taking a leave of absence from work.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form, the number of days involved, and the length of the religious obligation, and

ii. a written statement from the religious group's governing official evidencing the requirement necessitating the leave of absence including dates of the required leave of absence.

c. Maximum Length of Deferment. Up to four consecutive semesters (six consecutive quarters).

6. Military Service

a. Definition. The recipient is in the United States Armed Forces Reserves and is called on active duty status or is performing emergency state service with the National Guard.

b. Certification Requirements. The recipient must submit:

i. a completed deferment request form and the length of duty (beginning and ending dates), and

ii. a written certification from the commanding officer or regional supervisor including the dates and location of active duty, or

iii. a certified copy of the military orders.

c. Maximum Length of Deferment. Up to the length of the required active duty service period.

7. Recipient is engaging in a full-time course of study at an institution of higher education at the baccalaureate level or higher; or

8. Recipient is:

a. seeking and unable to find full-time employment for a single period not to exceed 12 months; or

b. seeking and unable to find full-time teaching employment at a qualifying Louisiana school for a period of time not to exceed 27 months.

C. A recipient who receives a deferment under §2105.B.7 and who is not able to enroll full-time due to a circumstance listed in §2103.E may request an exception to the full-time enrollment requirement of the deferment based on that circumstance. The maximum length of the continuation of the exception shall be the maximum length of exception provided by §2103.E.

D. Procedure for Requesting a Deferment

1. The recipient should complete and submit an application for a deferment, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. The

recipient must submit the application for deferment no later than three months after the date of the notice of repayment. The deadline for filing the request shall be prominently displayed on the notice of repayment.

2. If determined eligible for a deferment, the recipient will be notified of the length of the deferment and of any conditions of the deferment.

E. Conditions of Deferment

1. Deferments may be subject to the following conditions:

a. related to the particular circumstances for which the deferment is granted, including, but not limited to, providing proof of enrollment;

b. agreement to give notice that the condition or circumstance that warranted the deferment has ceased;

c. agreement to a repayment schedule commencing on expiration of the deferment;

d. agreement to acknowledge debt;

e. agreement that during the deferment period, prescription will be interrupted (meaning the period of time within which the Office has to enforce the promissory note will not continue to accrue); and/or

f. agreement to start repayment at the end of the deferment.

2. Conditions for deferments must be included in the notice of deferment.

F. The recipient must sign a written acknowledgment of receipt of the notice of deferment and acceptance of all conditions. The recipient must return the signed acknowledgment and acceptance within 30 days of the date of the notice, otherwise the deferment is void and repayment shall commence.

G. Cancellation of Repayment Obligation. Upon submission of applicable proof, loans may be canceled for the following reasons:

1. death of the recipient;

2. complete and permanent disability of the recipient which precludes the recipient from gainful employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), amended LR 28:775 (April 2002).

**§2107. Funding and Fees**

A. - A.2. ...

B. Less than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards for less than full-time enrollment provided that the student meets all other eligibility criteria and the requirements of §2103.C.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), amended LR 28:777 (April 2002).

**Chapter 23. Tuition Payment Program for Medical School Students**

**§2303. Establishing Eligibility**

A.- A.5. ...

6. To establish eligibility, the student applicant must meet all of the following criteria:

7. not have a criminal conviction, except for misdemeanor traffic violations; and

8. agree that the award will be used exclusively for educational expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999) LR 25:2177 (November 1999), LR 26:2754 (December 2000), LR 27:1220 (August 2001), repromulgated LR 27:1872 (November 2001), amended LR 28:777 (April 2002).

**§2309. Maintaining Eligibility**

A.- A.4. ...

5. have no criminal convictions, except for misdemeanor traffic violations.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1462 (August 1999), amended LR 26:2754 (December 2000), repromulgated LR 27:1873 (November 2001), amended LR 28:777 (April 2002).

George Badge Eldredge
General Counsel

0204#012

## RULE

**Tuition Trust Authority**
**Office of Student Financial Assistance**

Student Tuition and Revenue Trust (START Saving) Program (LAC 28:VI.107, 301, 303, 307, 311, and 313)

The Louisiana Tuition Trust Authority (LATTA) has amended the rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2).

**Title 28**
**EDUCATION**
**Part VI. Student Financial Assistance C Higher Education Savings**
**Chapter 1. General Provisions**
**Subchapter A. Student Tuition Trust Authority**
**§107. Applicable Definitions**

* * *

*Legal Entity***C** juridical persons including, but not limited to, groups, trusts, estates, associations, organizations, partnerships, and corporations that are incorporated, organized, established or authorized to conduct business in accordance with the laws of one or more states or territories of the United States. A natural person is not a legal entity.

* * *

*Louisiana Resident***C**

1. - 4. ...

5. a legal entity that is incorporated, organized, established or authorized to conduct business in accordance with the laws of Louisiana or registered with the Louisiana Secretary of State to conduct business in Louisiana and has a physical place of business in Louisiana.

* * *

*Qualified Higher Education Expenses***C**

1. tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated Beneficiary at an eligible institution of postsecondary education; and

2. room and board; and

3. expenses for special needs services in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance.

* * *

*Room and Board***C**qualified Room and Board costs include the reasonable cost for the academic period incurred by the designated beneficiary for room and board while attending an eligible educational institution on at least a half time basis, not to exceed the maximum amount included for room and board for such period in the cost of attendance (as currently defined in §472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll) as determined by the eligible educational institution for such period, or if greater, the actual invoice amount the student residing in housing owned or operated by the eligible education institution is charged by such institution for room and board. Room and board are only qualified higher education expenses for students who are enrolled at least half time.

* * *

*Special Needs Services and Beneficiary***C**services provided to a Beneficiary because the student has one or more disabilities.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:777 (April 2002).

**Chapter 3. Education Savings Account**

**§301. Education Savings Accounts**

A. - C.3. ...

4. Transfer of account ownership is not permitted, except in the case of the death of an account owner if a natural person or the dissolution of the account owner, if a legal entity.

a. The account owner who is a natural person may designate a person who will become the substitute account owner in the event of the original account owner=s death.

b. ...

c. In the event of the death of an Account Owner who is a natural person and who has not been named a substitute account owner, the account shall be terminated and the account shall be refunded to the beneficiary, if designated to receive the refund by the account owner, or the account owner=s estate.

d. In the event of the dissolution of an account owner who is a legal entity, the beneficiary shall become the substitute account owner. If the account owner is dissolved, the beneficiary designated to receive the refund has died, and there is no substitute beneficiary named, the refund shall be made to the beneficiary=s estate.

5. Only the account owner or the beneficiary may be designated to receive refunds from the account owned by an account owner who is a natural person. in the event of the death of the account owner when the account owner is designated to receive the refund and there is no substitute account owner named, the refund shall be made to the account owner=s estate.

D.1 - 6.c. ..

7. That an account owned by an account owner who is a legal entity cannot be terminated by the legal entity and the funds deposited in the account will not be refunded to the account owner.

8. That an account owner who is a legal entity can change the beneficiary of an account to one or more persons who are not members of the family of the beneficiary, however, in such case:

a. these transfers may be treated as refunds under federal and state tax laws in which case the account owner will be subject to any associated tax consequences; and

b. the earnings enhancements and interest thereon will not be transferred to the new beneficiary. (Note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

9. That in the event an account owner who is a legal entity is dissolved, the beneficiary will become the owner of the account.

E. - E.2. ...

F. Citizenship Requirements. Both an account owner who is not a legal entity and the beneficiary must meet the following citizenship requirements:

F.1. - H.1.e. ...

2. By signing the owner=s agreement, the account owner who is classified in §303.A.1 or 2 (does not include legal entities) provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purposes of verifying federal adjusted gross income.

3. By signing the owner=s agreement:

a. the account owner who is a natural person certifies that:

i. both account owner and beneficiary are United States Citizens or permanent residents of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and, if permanent residents have provided copies of INS documentation with the submission of the application and owner=s agreement; and

ii. the information provided in the application is true and correct;

b. the person signing on behalf of an account owner who is a legal entity certifies that:

i. the account owner is a legal entity as defined in rule and the application;

ii. he or she is the designated agent of the legal entity;

iii. he or she is authorized to take any action permitted the account owner;

iv. the account owner acknowledges and agrees that once funds are deposited in a START account, neither

the deposits nor the interest earned thereon can be refunded to the account owner;

v. the information provided in the application is true and correct; and

vi. if the beneficiary is not a Louisiana resident, the legal entity fulfills the definition of Louisiana resident as found in rule and the application.

4. Social security numbers and federal and state employer identification numbers will be used for purposes of federal and state income tax reporting and to access individual account information for administrative purposes (see §3150).

I. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997), amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:2262 (October 2000), LR 27:1878 (November 2001), LR 28:778 (April 2002).

**§303. Account Owner Classifications**

A. - B. ...

C. Account owner classification is made at the time of the initiation of the agreement. Changes in the residency of the account owner or beneficiary after the initiation of the agreement do not change the account owner=s classification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 27:1879 (November 2001), amended LR 28:779 (April 2002).

**§307. Allocation of Earnings Enhancements**

A. - A.2. ...

B. Providing Proof of Annual Federal Adjusted Gross Income

1. For account owners who are classified in §303.A.1 or 2 (does not include Legal Entities), the account owner's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement is used in computing the annual earnings enhancement allocation.

2. - 2.b. ...

3. In completing the owner=s agreement, account owner's who are classified in §303.a.1 or 2 (does not include legal entities), authorize the LATTA to access their records with the Louisiana Department of Revenue for the purpose of verifying the account owners= federal adjusted gross income. In the event the account owners do not file tax information with the Louisiana Department of Revenue, they must provide the LATTA with:

B.3.a. - G.1. ...

2. have an Account Owner who falls under one of the classifications described in §303.A.1, 2, or 3.

H. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997),amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:1263 (June 2000), LR 26:2263 (October 2000), LR 27:37 (January 2001) LR 27:1222 (August 2001), LR 27:1880 (November 2001), LR 28:779 (April 2002).

**§311. Termination and Refund of an Education Savings Account**

A. - A.3. ...

B. Account Terminations

1. The account owner who is a natural person may terminate an account at any time.

2. - 5. ...

6. The account owner who is a legal entity may not terminate an account, except in accordance with §311.F, however, the account owner who is a legal entity may designate a substitute beneficiary in accordance with §313.F.

C. - C.2. ...

3. No refunds shall be made to an account owner who is a legal entity. If an account owned by a legal entity is terminated by LATTA or the account owner in accordance with §311.F, the refund will be made to the beneficiary or to the beneficiary=s estate if no substitute beneficiary has been designated by the account owner.

D. Designation of a Refund Recipient

1. In the owner=s agreement, the account owner who is a natural person may designate the beneficiary to receive refunds from the account.

2. - 3. ...

4. The beneficiary of an account owned by a legal entity is automatically designated as the refund recipient.

E. - E.3. ...

F. Voluntary termination or partial refund of an account without penalty prior to January 1, 2002. No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded at the request of the account owner prior to January 1, 2002, due to the following reasons:

1. the death of the beneficiary; the refund shall be equal to the redemption value of the account and shall be made to:

a. the account owner, if the account owner is a natural person; or

b. the beneficiary=s estate, if the account owner is a legal entity;

2. the disability of the beneficiary; the refund shall be equal to the redemption value of the account and shall be made to:

a. the account owner or the beneficiary, as designated in the owner=s agreement, if the account owner is a natural person; or

b. the beneficiary, if the account owner is a legal entity;

3. the beneficiary receives a scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the Beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary. in such case the refund shall be equal to the scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary of the account or the redemption value, whichever is less, and shall be made to:

a. the account owner or the beneficiary, as designated in the owner=s agreement, if the account owner is a natural person; or

b. the beneficiary, if the account owner is a legal entity.

G. - G.3. ...

H. Voluntary Termination of an Account after December 31, 2001

1. Refunds shall be equal to the redemption value of the education savings account at the time of the refund, and shall be made to the person designated in the owner's agreement or by rule.

H.2. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998). Repromulgated LR 26:2265 (October 2000). Amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002).

**§313. Substitution, Assignment, and Transfer**

A. - A.3. ...

4. If the substitute beneficiary is not a member of the family of the previous beneficiary:

a. and the account owner is a natural person, the account must be refunded to the account owner and a new account must be opened.

b. and the account owner is a legal entity, a new account shall be opened in the name of the new beneficiary, and:

i. these transfers may be treated as refunds under federal and state tax laws in which case the account owner will be subject to any associated tax consequences; and

ii. the earnings enhancements and interest thereon will not be transferred to the new beneficiary. (note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR:26:2266 (October 2000)., amended LR 27:1883 (November 2001), LR 28:780 (April 2002).

George Badge Eldredge
General Counsel

0204#013

## RULE

**Department of Environmental Quality**
**Office of Environmental Assessment**
**Environmental Planning Division**

Use or Disposal of Sewage Sludge
(LAC 33:VII.301 and IX.3101-3113)(WP034)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste regulations, LAC 33:VII.301, and adopted the Water Quality regulations, LAC 33:IX.Chapter 23.Subchapter X (Log #WP034).

The Rule establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included for sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land, or sewage sludge fired in a sewage sludge incinerator. Also included are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, or domestic septage applied to the land. Siting, operation, and financial assurance requirements are included for commercial blenders, composters, and mixers of sewage sludge or a material derived from sewage sludge. The Rule includes the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities and requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill. The basis and rationale for this Rule are to establish regulations that will be in line with EPA regulations for the final use and disposal of sewage sludge. The adoption of this regulation will prepare the Department for future assumption of the Sewage Sludge Management Program. A benefit of assumption of the Sewage Sludge Management Program is that facilities will not be required to obtain both an EPA permit and a separate state permit for the use and disposal of sewage sludge. Upon assumption of the program, sewage sludge requirements will be a part of the LPDES permit or as a separate single LPDES general permit or, in the case of a sewage sludge incinerator, as a single air permit.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. The only impact this proposed Rule may have on the family, as described in R.S. 49:972, is that the family budget may be affected if a municipality or private sanitary wastewater treatment system should choose to increase its sewer user fees. However, such increases directly related to the implementation of this rule should be limited to very few facilities and would be difficult to predict.

**Title 33**
**ENVIRONMENTAL QUALITY**
**Part VII. SOLID WASTE**
**Chapter 3. Scope and Mandatory Provisions of the Program**

**§301. Wastes Governed by These Regulations**

All solid wastes as defined by the act and these regulations are subject to the provisions of these regulations, except as follows:

* * *

[See Prior Text in A - A.7]

8. infectious waste or other hospital or clinic wastes that are not processed or disposed of in solid waste processing or disposal facilities permitted under these regulations; and

9. sewage sludge and domestic septage as defined by LAC 33:IX.Chapter 23.Subchapter X of the Water Quality regulations will be exempt from all requirements of LAC 33:VII, except for the transportation requirements in LAC 33:VII.503, 529, and 705, upon the date of receipt by the department of sewage sludge program authority from EPA in accordance with 40 CFR Part 501 under the NPDES program. Provisions addressing sewage sludge and domestic

septage found throughout these regulations will no longer apply once the department receives program authority.

* * *

[See Prior Text in B - B.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2515 (November 2000), LR 28:780 (April 2002).

## Part IX. Water Quality

## Chapter 23. The LPDES Program

## Subchapter X. Standards for the Use or Disposal of Sewage Sludge

### §3101. General Provisions

A. Purpose and Applicability

1. Purpose

a. This Subchapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Subchapter for sewage sludge, a material derived from sewage sludge, and domestic septage that is applied to the land or sewage sludge fired in a sewage sludge incinerator. Also included in this Subchapter are pathogen and alternative vector attraction reduction requirements for sewage sludge, a material derived from sewage sludge, and domestic septage applied to the land and also the siting, operation, and financial assurance requirements for commercial blenders, composters, mixers, or preparers of sewage sludge or a material derived from sewage sludge.

b. The standards in this Subchapter include the frequency of monitoring, recordkeeping requirements, and reporting requirements for Class I sludge management facilities as defined in Subsection H of this Section.

c. This Subchapter establishes requirements for the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill.

d. In addition, this Subchapter contains specific prohibitions and restrictions regarding the use and disposal of sewage sludge.

2. Applicability

a. This Subchapter applies to:

i. any person who prepares sewage sludge or a material derived from sewage sludge;

ii. any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land;

iii. any person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill;

iv. the owner/operator of a surface disposal site; and

v. the owner/operator of a sewage sludge incinerator.

b. This Subchapter applies to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land or placed on a surface disposal site, to the land where the sewage sludge, a material derived from sewage sludge, or domestic septage is applied, and to a surface disposal site.

c. This Subchapter applies to sewage sludge fired in a sewage sludge incinerator, the sewage sludge incinerator, and the exit gas from a sewage sludge incinerator stack.

d. This Subchapter applies to the person who prepares sewage sludge that is disposed in a Municipal Solid Waste Landfill (MSWL).

B. Compliance Period

1. Except as otherwise specified in this Subchapter and in Paragraph B.3 of this Section, compliance with the standards in this Subchapter shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994. When compliance with the standards requires construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

2.a. The requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter for total hydrocarbons in the exit gas from a sewage sludge incinerator are effective February 19, 1994, or if compliance with the operational standard for total hydrocarbons in this Subchapter requires the construction of new pollution control facilities, February 19, 1995.

b. All other requirements for frequency of monitoring, recordkeeping, and reporting in this Subchapter are effective on July 20, 1993.

3.a. Unless otherwise specified in LAC 33:IX.3113, compliance with the requirements in LAC 33:IX.3113.B, beginning with the definition of *average daily concentration* through the definition of *wet scrubber*, 3113.D.3, 4, and 5, F.5, 6.a, 7, 8.e, and 10, and G.1.a and c shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.3113, compliance with the revised requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. Compliance with the requirements in Paragraphs E.2, 3, and 4 of this Section shall be achieved as expeditiously as practicable, but in no case later than 2 years from receipt of program authorization under the NPDES program.

c. Upon the effective date of these regulations, those persons who have received an exemption under LAC 33:VII for any form of use or disposal of sewage sludge will have 180 days to submit an application for permit coverage under these regulations.

C. Permits and Permitting Requirements

1.a. Except as exempted in Paragraph C.2 of this Section, no person shall prepare sewage sludge or a material derived from sewage sludge; apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land; or own or operate a sewage sludge incinerator without first obtaining a permit that authorizes such practice in accordance with the applicable requirements of this Subchapter and LAC 33:III.Chapter 5, in the case of sewage sludge incinerators.

b. The person who prepares sewage sludge or a material derived from sewage sludge and the person who applies sewage sludge, a material derived from sewage

sludge, or domestic septage to the land shall use the application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q.

c. The owner/operator of a sewage sludge incinerator shall apply for a permit issued either under Title V of the 1990 amended Clean Air Act or other appropriate air quality permit and shall use the permit application forms indicated in LAC 33:IX.2331.A.2 and furnish the information requested in LAC 33:IX.2331.Q and LAC 33:III.Chapter 5. The permit shall be in accordance with all applicable requirements of this Subchapter and other applicable requirements of LAC 33:IX.Chapter 23.

2.a. The person who applies bagged sewage sludge or a bagged material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bagged sewage sludge or a bagged material derived from sewage sludge that is *Exceptional Quality* as defined in Subsection H of this Section.

b. The person who applies bulk sewage sludge or a bulk material derived from sewage sludge to the land is exempt from the requirement of obtaining a permit if the person applies bulk sewage sludge or a bulk material derived from sewage sludge that was obtained from a facility with an Exceptional Quality Certification under LAC 33:IX.3103.J and that person provides proof to the state administrative authority that the bulk sewage sludge or the bulk material derived from sewage sludge was obtained from a facility with an Exceptional Quality Certification.

c. The state administrative authority may exempt any other person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land from the requirement of obtaining a permit, on a case-by-case basis, after determining that human health and the environment will not be adversely affected by the application of sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. The Municipal Solid Waste Landfill where sewage sludge is disposed must possess a permit issued under LAC 33:VII or subtitle C of the Solid Waste Disposal Act.

2. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide the necessary information to the owner/operator of the landfill where the sewage sludge is to be disposed to assure that the landfill will be in compliance with its permit requirements.

3. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide proof to the state administrative authority that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill to the state administrative authority.

E. Prohibitions, Restrictions, and Additional or More Stringent Requirements

1.a. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage through any practice for which requirements have not been established in this Subchapter.

b. No person shall use or dispose of sewage sludge, a material derived from sewage sludge, or domestic septage except in accordance with the requirements in this Subchapter.

2. Surface disposal, as defined in Subsection H of this Section, is prohibited as a use or disposal method of sewage sludge, of a material derived from sewage sludge, or of domestic septage.

3.a. To store, or storage of, sewage sludge, as defined in Subsection H of this Section, is allowed for a period not to exceed six consecutive months when:

i. necessary for the upgrade, repair, or maintenance of a treatment works treating domestic sewage or for agricultural storage purposes when the sewage sludge is to be used for beneficial use as defined in Subsection H of this Section;

ii. notification has been made by the person who wishes to store the sewage sludge to the state administrative authority; and

iii. subsequent approval by the state administrative authority has been received.

b.i. The state administrative authority may approve the storage of sewage sludge for commercial blenders, composters, mixers, or preparers of sewage sludge or for purposes other than those listed in Subparagraph E.3.a of this Section, for a period greater than six consecutive months, if the person who stores the sewage sludge demonstrates that the storage of the sewage sludge will not adversely affect human health and the environment.

ii. The demonstration shall be in the form of an official request forwarded to the state administrative authority at least 90 days prior to the storage of the sewage sludge and shall include, but is not limited to:

(a). the name and address of the person who prepared the sewage sludge;

(b). the name and address of the person who either owns the land or leases the land where the sewage sludge is to be stored, if different from the person who prepared the sewage sludge;

(c). the location, by either street address or latitude and longitude, of the land;

(d). an explanation of why the sewage sludge needs to remain on the land;

(e). an explanation of how human health and the environment will not be affected;

(f). the approximate date when the sewage sludge will be stored on the land and the approximate length of time the sewage sludge will be stored on the land; and

(g). the final use and disposal method after the storage period has expired.

iii.(a). The state administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request. If the information is deemed incomplete, the state administrative authority will issue a notice of deficiency. The commercial blender, composter, mixer, or preparer of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

(b). Within 30 days after deeming the information complete, the state administrative authority will then make and issue a determination to grant or deny the request for the storage of sewage sludge.

4.a. The use of ponds, lagoons, or landfarms is allowed for the treatment of sewage sludge or domestic septage, as defined in Subsection H of this Section, only after the applicable air, solid waste, hazardous waste, and water discharge permits have been applied for and granted by the state administrative authority.

b. The person who makes use of a pond, lagoon, or landfarm to treat sewage sludge or domestic septage shall provide documentation to the state administrative authority that indicates the final use or disposal method for the sewage sludge or domestic septage and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Subchapter.

5. The application of domestic septage to a residential lawn or garden is prohibited.

6.a. The blending, composting, or mixing of sewage sludge with feedstock or supplements containing any of the materials listed in Table 1 of LAC 33:IX.3101.E or whose hazardous waste codes are those other than D002 or D003 is prohibited.

b. The state administrative authority may prohibit the use of other materials as feedstock or supplements if the use of such materials has a potential to adversely affect human health or the environment, as determined by the administrative authority.

**Table 1 of LAC 33:IX.3101.E**

**Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge**

| | |
|---|---|
| Antifreeze | Pesticides |
| Automotive (lead-acid) batteries | Photographic supplies |
| Brake fluid | Propane cylinders |
| Cleaners (drain, oven, toilet) | Treated wood containing the preservatives CCA and/or PCP |
| Gasoline and gasoline cans | Tubes and buckets of adhesives, caulking, etc. |
| Herbicides | Swimming pool chemicals |
| Household (dry cell) batteries | Unmarked containers |
| Oil-based paint | Used motor oil |

7.a. The use of sewage sludge for daily cover at landfill facilities is prohibited.

b. The use of sewage sludge as interim and final cover for landfill facilities is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.3103.

8.a. On a case-by-case basis, the permitting authority may impose requirements in addition to or more stringent than the requirements in this Subchapter when necessary to protect human health and the environment from any adverse effect of a pollutant in the sewage sludge.

b. Nothing in this Subchapter precludes a local government, district, or political subdivision thereof or interstate agency from imposing additional or more stringent requirements than the requirements presented in this Subchapter.

F. Exclusions

1. Treatment Processes. This Subchapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in LAC 33:IX.3111.C and D.

2. Selection of a Use or Disposal Practice. This Subchapter does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is to be made by the person who prepares the sewage sludge.

3. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with auxiliary fuel, as defined in LAC 33:IX.3113.B, this Subchapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

b. This Subchapter does not establish requirements for sewage sludge co-fired with auxiliary fuel if the auxiliary fuel exceeds 30 percent of the dry weight of the sewage sludge and auxiliary fuel mixture.

4. Sludge Generated at an Industrial Facility. This Subchapter does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

5. Hazardous Sewage Sludge. This Subchapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous under 40 CFR Part 261 and/or LAC 33:V.

6. Sewage Sludge with High PCB Concentration. This Subchapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

7. Incinerator Ash. This Subchapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

8. Grit and Screenings. This Subchapter does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

9. Drinking Water Treatment Sludge. This Subchapter does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or groundwater used for drinking water.

10. Commercial and Industrial Septage. This Subchapter does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

11. Transporters and Haulers of Sewage Sludge or Domestic Septage. This Subchapter does not establish requirements for the transporting and hauling of sewage sludge or domestic septage. Transporters and haulers of sewage sludge or domestic septage must comply with all of the applicable requirements of LAC 33:VII pertaining to the transporting or hauling of sewage sludge or domestic septage.

G. Sampling and Analysis

1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land and sewage sludge fired in a sewage sludge incinerator.

b. The permittee shall create and maintain records of sampling and monitoring information that shall include:

i. the date, exact place, and time of sampling or measurements;

ii. the individual(s) who performed the sampling or measurements;

iii. the date(s) analyses were performed;

iv. the individual(s) who performed the analysis;

v. the analytical techniques or methods used; and

vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Subchapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services, Permits Division. Methods in the materials listed below shall be used to analyze samples of sewage sludge.

a. Enteric Viruses. ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11**C**Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.

b. Fecal Coliform. Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

c. Helminth Ova. Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).

d. Inorganic Pollutants. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB-87-120-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE, Washington, DC 20002 (Document Number 955-001-00000-1).

e. *Salmonella sp*. Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of Salmonella and Pseudomonas Aeruginosa," Journal of the Water Pollution Control Federation, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

f. Specific Oxygen Uptake Rate. Part 2710 B, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

g. Total, Fixed, and Volatile Solids. Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

h. Incineration of Sewage Sludge**C**Standards of Performance and Particulate Matter. Materials and Methods at 40 CFR Part 60 as incorporated by reference at LAC 33:III.3003.

i. Incineration of Sewage Sludge**C**National Emission Standards for Beryllium and for Mercury. Materials, Methods, and Standards at 40 CFR Part 61 as incorporated by reference at LAC 33:III.5116.

j. Composting of Sewage Sludge. "Test Methods for the Examination of Composting and Compost," The US Composting Council Research and Education Foundation and USDA, TMECC Website: http://tmecc.org/tmecc/index.html.

H. General Definitions

*Apply Sewage Sludge or Sewage Sludge Applied to the Land*—land application of sewage sludge.

*Base Flood*—a flood that has a 1 percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

*Beneficial Use*—using sewage sludge or a material derived from sewage sludge or domestic septage for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose adverse effects upon human health and the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

*Bulk Sewage Sludge*—sewage sludge that is not sold or given away in a bag or other container for application to the land.

*Class I Sludge Management Facility*—for the purpose of this Subchapter:

a. any publicly owned treatment works (POTW) or privately owned wastewater treatment device or system, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial blenders, composters, mixers, or preparers;

c. the owner/operator of a sewage sludge incinerator; and

d. the person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land.

*Commercial Blender, Composter, Mixer, or Preparer of Sewage Sludge*—any person who prepares sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

*Cover Crop*—a small grain crop, such as oats, wheat, or barley, not grown for harvest.

*Domestic Septage*—either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

*Domestic Sewage*— waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry Weight Basis*—calculated on the basis of having been dried at 105° C until reaching a constant mass (i.e., essentially 100 percent solids content).

*Exceptional Quality*—sewage sludge or a material derived from sewage sludge that meets the ceiling concentrations in Table 1 of LAC 33:IX.3103.D, the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the pathogen requirements in LAC 33:IX.3111.C.1, one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h, and the concentration of PCBs of less than 10 mg/kg of total solids (dry weight).

*Feed Crops*—crops produced primarily for consumption by animals.

*Feedstock*—primarily biologically decomposable organic material that is blended, mixed, or composted with sewage sludge.

*Fiber Crops*—crops such as flax and cotton.

*Food Crops*—crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

*Groundwater*—water below the land surface in the saturated zone.

*Industrial Wastewater*—wastewater generated in a commercial or industrial process.

*Land Application*—the beneficial use of sewage sludge, a material derived from sewage sludge, or domestic septage by either spraying or spreading onto the land surface, injection below the land surface, or incorporation into the soil.

*Other Container*—either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

*Permitting Authority*—either EPA or a state with an EPA-approved sludge management program.

*Person Who Prepares Sewage Sludge*—either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

*Pollutant*—an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the administrative authority, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

*Pollutant Limit*—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

*Runoff*—rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Surface Disposal*—the use or disposal of sewage sludge that does not meet the criteria of *land application* as defined in this Subsection. This may include, but is not limited to, ponds, lagoons, sewage sludge only landfills (monofills), or landfarms.

*Supplements*—for the purpose of this Subchapter, materials blended, composted, or mixed with sewage sludge or other feedstock and sewage sludge in order to raise the moisture level and/or to adjust the carbon to nitrogen ratio, and materials added during composting or to compost to provide attributes required by customers for certain compost products.

*To Store, or Storage of, Sewage Sludge*—the temporary placement of sewage sludge on land.

*To Treat, or Treatment of, Sewage Sludge or Domestic Septage*—the preparation of sewage sludge or domestic septage for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

*Treatment Works*—either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002).

**§3103. Land Application**

A. Applicability

1. This Section applies to any person who prepares sewage sludge or a material derived from sewage sludge that is applied to the land; to any person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land; to sewage sludge, a material derived from sewage sludge, or domestic septage that is applied to the land; and to the land on which sewage sludge, a material derived from sewage sludge, or domestic septage is applied.

2.a.i. The general requirements in Paragraph C.1 of this Section, the other requirements in Subparagraph E.1 of this Section, the general management practices in Paragraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section, and the other management practices in Paragraph E.2 of this Section do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Paragraph C.1 of this Section, the other requirements in Paragraph E.1 of this Section, the general management practices in Subparagraph C.2.a of this Section and the other management practices in Paragraph E.2 of this Section to the bulk sewage sludge in Clause A.2.a.i of this Section and the bulk material in Clause A.2.a.ii of this Section on a case-by-case basis after determining that any or all of the requirements or management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the bulk sewage sludge or bulk material derived from sewage sludge to the land.

3.a.i. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if sewage sludge sold or given away in a bag or other container is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

ii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply if a material derived from sewage sludge is sold or given away in a bag or other container and the material is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

iii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is *Exceptional Quality* as defined in LAC 33:IX.3101.H and the preparer has received and maintains an Exceptional Quality Certification under the requirements in Subsection J of this Section.

b. The state administrative authority may apply any or all of the general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section to the sewage sludge in Clause A.3.a.i of this Section or the derived material in Clause A.3.a.ii or iii of this Section on a case-by-case basis after determining that the general requirements or the general management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the sewage sludge or derived material to the land.

B. Special Definitions

*Agricultural Land*—land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

*Agronomic Rate*—

a. the whole sludge application rate (dry weight basis) designed:

i. to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

ii. to minimize the amount of nitrogen in the sewage sludge that is not utilized by the crop or vegetation grown on the land and either passes below the root zone to the groundwater or gets into surface waters during storm events;

b. agronomic rate may be extended to include phosphorus to application sites that are located within the drainage basin of water bodies that have been determined by the state administrative authority to be impaired by phosphorus.

*Annual Pollutant Loading Rate*—the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

*Annual Whole Sludge Application Rate*—the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365-day period.

*Cumulative Pollutant Loading Rate*—the maximum amount of an inorganic pollutant that can be applied to an area of land.

*Forest*—a tract of land thick with trees and underbrush.

*Monthly Average*—the arithmetic mean of all measurements taken during the month.

*Pasture*—land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

*Public Contact Site*—land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

*Range Land*—open land with indigenous vegetation.

*Reclamation Site*—drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

C. General Requirements and General Management Practices

1. General Requirements

a.i. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who receives the sewage sludge shall comply with the requirements in this Subchapter.

ii. The person who provides the sewage sludge shall provide the person who receives the sewage sludge the following information:

(a). the name, mailing address, and location of the facility or facilities of the person providing the sewage sludge;

(b). the total dry metric tons being provided per 365-day period; and

(c). a description of any treatment processes occurring at the providing facility or facilities, including blending, composting, or mixing activities and the treatment to reduce pathogens and/or vector attraction reduction.

b. No person shall apply sewage sludge, a material derived from sewage sludge, or domestic septage to the land except in accordance with the requirements in this Subchapter.

c. The person who applies sewage sludge, a material derived from sewage sludge, or domestic septage to the land shall obtain information needed to comply with the requirements in this Subchapter.

d. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to the land until either a determination has been made by the administrative authority that the land application site is a legitimate beneficial use site or the person who applies the sewage sludge or a material derived from sewage sludge to the land furnishes to the administrative authority written documentation from a qualified, independent third party, such as the Louisiana Cooperative Extension Service or the Louisiana Department of Agriculture, that the land application site is a legitimate beneficial use site.

2. General Management Practices

a. All Sewage Sludge, a Material Derived from Sewage Sludge, or Domestic Septage

i. All sewage sludge or a material derived from sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site only at a whole sludge application rate that is equal to or less than the agronomic rate for the sewage sludge or a material derived from sewage sludge, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

ii. Sewage sludge, a material derived from sewage sludge, or domestic septage shall be applied to the land only in accordance with the requirements pertaining to slope in Table 1 of LAC 33:IX:3103.C.

iii. In addition to the restrictions addressed in Clause C.2.a.ii of this Section, all sewage sludge, a material derived from sewage sludge, or domestic septage having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

iv. When sewage sludge, a material derived from sewage sludge, or domestic septage is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the state administrative authority:

(a). private potable water supply well C 300 feet, unless special permission is granted by the private potable water supply owner;

(b). public potable water supply well, surface water intake, treatment plant, or public potable water supply elevated or ground storage tank C 300 feet, unless special permission is granted by the Department of Health & Hospitals;

(c). established school, institution, business, or occupied residential structure C 200 feet, unless special permission is granted by a qualified representative of the established school, institution, business, or occupied residential structure; and

(d). property boundary C 100 feet, unless special permission is granted by the property owner(s).

v. Sewage sludge, a material derived from sewage sludge, or domestic septage shall not be applied to agricultural land, forest, or a reclamation site if the water table is less than three feet below the zone of incorporation at the time of application.

vi. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in Paragraph D.3 of this Section has been reached during that period.

b. Sewage Sludge Sold or Given Away in a Bag or Other Container

i. Sewage sludge sold or given away in a bag or other container shall not be applied to the land at a rate that would cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

ii. The permittee shall either affix a label to the bag or other container holding sewage sludge that is sold or given away for application to the land, or shall provide an information sheet to the person who receives sewage sludge sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

(a). the name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;

(b). application instructions and a statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet;

(c). the annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded; and

(d). concentration of PCBs in mg/kg of total solids (dry wt.).

**Table 1 of LAC 33:IX.3103.C**
**Slope Limitations for Land Application of Sewage Sludge or Domestic Septage**

| Slope Percent | Application Restriction |
|---|---|
| 0-3 | None, except drainage to prevent standing water shall be provided. |
| 3-6 | A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion. |
| 6-12 | Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the state administrative authority to prevent runoff from the land application site and erosion. |
| >12 | Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion. |

D. Pollutant Limits

1. Sewage Sludge

a. Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.3103.D.

b. If bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

i. the cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of LAC 33:IX.3103.D; or

ii. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D.

c. If sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge or the material derived from sewage sludge shall not exceed the ceiling concentrations in Table 1 of LAC 33:IX.3103.D and the pollutant concentrations for each pollutant listed in Table 3 of LAC 33:IX.3103.D, and the concentration of PCB must be less than 10 mg/kg of total solids (dry wt.).

d. If sewage sludge is sold or given away in a bag or other container for application to the land, either:

i. the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.3103.D; or

ii. the product of the concentration of each pollutant in the sewage sludge and the annual whole sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in Appendix P of this Chapter.

2. Pollutant Concentrations and Loading Rates**C**Sewage Sludge

a. Ceiling Concentrations

| Table 1 of LAC 33:IX.3103.D<br>Ceiling Concentrations | |
|---|---|
| **Pollutant** | **Ceiling Concentration (milligrams per kilogram)[1]** |
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4300 |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7500 |
| [1]Dry weight basis | |

b. Cumulative Pollutant Loading Rates

| Table 2 of LAC 33:IX.3103.D<br>Cumulative Pollutant Loading Rates | |
|---|---|
| **Pollutant** | **Cumulative Pollutant Loading Rate (kilograms per hectare)** |
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |

c. Pollutant Concentrations

| Table 3 of LAC 33:IX.3103.D<br>Pollutant Concentrations | |
|---|---|
| **Pollutant** | **Monthly Average Concentration (milligrams per kilogram)[1]** |
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |
| [1]Dry weight basis | |

d. Annual Pollutant Loading Rates

| Table 4 of LAC 33:IX.3103.D<br>Annual Pollutant Loading Rates | |
|---|---|
| **Pollutant** | **Annual Pollutant Loading Rate (kilograms per hectare per 365-day period)** |
| Arsenic | 2.0 |
| Cadmium | 1.9 |
| Copper | 75 |
| Lead | 15 |
| Mercury | 0.85 |
| Nickel | 21 |
| Selenium | 5.0 |
| Zinc | 140 |

3. Domestic Septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using Equation (1).

$$AAR = \frac{N}{0.0026} \qquad \text{Equation (1)}$$

Where:

AAR = annual application rate in gallons per acre per 365-day period.

N = amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

E. Other Requirements and Other Management Practices for Bulk Sewage Sludge

1. Other Requirements

a. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk sewage sludge written notification of the concentration, on a dry weight basis, of total nitrogen, ammonia (as N), nitrates, potassium, and phosphorus in the bulk sewage sludge.

b. When a person who prepares bulk sewage sludge provides the bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the

bulk sewage sludge notice and necessary information to comply with the requirements in this Subchapter.

c. The person who applies bulk sewage sludge to the land shall provide the owner or leaseholder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this Subchapter.

d. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to the land without first contacting the state administrative authority to determine if bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been applied to the land since July 20, 1993.

e. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D has been reached.

f. If bulk sewage sludge has not been applied to a site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of LAC 33:IX.3103.D may be applied to the site in accordance with Clause D.1.b.i of this Section.

g. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with Clause D.1.b.i of this Section.

h. If bulk sewage sludge has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with Clause D.1.b.i of this Section.

2. Other Management Practices

a. Bulk sewage sludge shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

b. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a *wetland* or other *waters of the state*, as defined in LAC 33:IX.2313, except as provided in a permit issued in accordance with Section 402 or 404 of the CWA or LAC 33:IX.Chapter 23.

c. Bulk sewage sludge shall not be applied to agricultural land, forest, or a reclamation site that is 33 feet (10 meters) or less from *waters of the state*, as defined in LAC 33:IX.2313, unless otherwise specified by the permitting authority.

F. Operational Standards—Pathogens and Vector Attraction Reduction

1. Pathogens—Sewage Sludge

a. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 or the Class B pathogen requirements and site restrictions in LAC 33:IX.3111.C.2 shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. The Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

2. Pathogens—Domestic Septage. The requirements in either LAC 33:IX.3111.C.3.a or b shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

3. Vector Attraction Reduction—Sewage Sludge

a. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-j shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h shall be met when sewage sludge or a material derived from sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

4. Vector Attraction Reduction—Domestic Septage. The vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

G. Frequency of Monitoring

1. Sewage Sludge

a. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.3103.D; the frequency of monitoring for pathogen density requirements in LAC 33:IX.3111.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-d and g-h shall be the frequency specified in Table 1 of LAC 33:IX.3103.G.

**Table 1 of LAC 33:IX.3103.G**
**Frequency of Monitoring – Land Application**

| Amount of Sewage Sludge[1] (metric tons per 365-day period) | Frequency |
|---|---|
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1,500 | Once per quarter (four times per year) |
| Equal to or greater than 1,500 but less than 15,000 | Once per 60 days (six times per year) |
| Equal to or greater than 15,000 | Once per month (12 times per year) |

[1]Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

b. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3103.G, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.3111.C.1.e.ii and iii.

2. Domestic Septage. If either the pathogen requirements in LAC 33:IX.3111.C.3.b or the vector attraction reduction requirements in LAC 33:IX.3111.D.2.k

are met when domestic septage is applied to agricultural land, forest, or a reclamation site, the permittee shall monitor each container of domestic septage applied to the land for compliance with those requirements.

H. Recordkeeping

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Sewage Sludge

a. The recordkeeping requirements for the person who prepares the sewage sludge or a material derived from sewage sludge that is land applied and meets the criteria in Subparagraph A.2.a or 3.a of this Section are those indicated in Subparagraph J.5.a of this Section.

b. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Clauses C.2.a.i-v of this Section and the other management practices in Paragraph E.2 of this Section are met for each site on which bulk sewage sludge is applied;

(b). a description of how the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met for each site on which bulk sewage sludge is applied; and

(c). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v, the other management practices in LAC 33:IX.3103.E.2 and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.3103.D, the Class B pathogen requirements in LAC 33:IX.3111.C.2, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.3103.D;

(b). a description of how the Class B pathogen requirements in LAC 33:IX.3111.C.2 are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in LAC 33:IX.3111.C.2 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Clauses C.2.a.i-v of this Section and the other management practices in Paragraph E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(b). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which bulk sewage sludge is applied;

(c). a description of how the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met;

(d). the date bulk sewage sludge is applied to each site; and

(e). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v, the other management practices in LAC 33:IX.3103.E.2, the site restrictions in LAC 33:IX.3111.C.2.e, and the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system as described in

the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.3103.D and that meets the *Exceptional Quality* or Class B pathogen requirements in LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h for the person who prepares the bulk sewage sludge, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i or j for the person who applies the bulk sewage sludge to the land:

i. the person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 1 of LAC 33:IX.3103.D in the bulk sewage sludge;

(b). a description of how the *Exceptional Quality* or Class B pathogen requirements in LAC 33:IX.3111.C are met;

(c). how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a - h is met; and

(d). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either LAC 33:IX.3111.C.1 or 2] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk sewage sludge to the land shall develop the following information, retain the information in Subclauses H.2.d.ii.(a)-(g) of this Section indefinitely, and retain the information in Subclauses H.2.d.ii.(h)-(m) of this Section for five years:

(a). the location, by either street address or latitude and longitude, of each land site on which bulk sewage sludge is applied;

(b). the number of hectares or acres in each site on which bulk sewage sludge is applied;

(c). the date bulk sewage sludge is applied to each land site;

(d). the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of LAC 33:IX.3103.D in the bulk sewage sludge applied to each land site, including the amount in Subparagraph E.1.g of this Section;

(e). the amount of sewage sludge (i.e., tons or metric tons) applied to each land site;

(f). a description of how the information was obtained in order to comply with Paragraph E.1 of this Section;

(g). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in LAC 33:IX.3103.E.1 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(h). a description of how the general management practices in Clauses C.2.a.i-v of this Section and the other management practices in Paragraph E.2 of this Section are met for each land site on which bulk sewage sludge is applied;

(i). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v and the other management practices in LAC 33:IX.3103.E.2 was prepared for each land site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(j). a description of how the site restrictions in LAC 33:IX.3111.C.2.e are met for each land site on which Class B bulk sewage sludge is applied;

(k). the following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in LAC 33:IX.3111.C.2: "I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in LAC 33:IX.3111.C.2.e for each land site on which Class B sewage sludge was applied was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(l). if the vector attraction reduction requirements in either LAC 33:IX.3111.D.2.i or j are met, a description of how the requirements are met; and

(m). the following certification statement when the vector attraction reduction requirement in either LAC 33:IX.3111.D.2.i or j is met: "I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either LAC 33:IX.3111.D.2.i or j] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

e. for sewage sludge sold or given away in a bag or other container for application to the land meeting the

requirement at Clause D.1.d.ii of this Section, the Exceptional Quality pathogen requirements at LAC 33:IX.3111.C, and the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h:

i. the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(a). the annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded;

(b). the concentration of each pollutant listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge;

(c). a description of how the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 are met;

(d). a description of how one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h is met;

(e). a description of how the general management practice in Clause C.2.b.ii of this Section was met; and

(f). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practice in LAC 33:IX.3103.C.2.b.ii, the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the sewage sludge that is given away or sold in a bag or other container to the land that is agricultural land, forest, a public contact site, or a reclamation area shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Clauses C.2.a.i-v and b.i of this Section are met for each site on which the sewage sludge given away or sold in a bag or other container is applied; and

(b). the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.3103.C.2.a.i-v and b.i was prepared for each site on which sewage sludge given away or sold in a bag or other container is applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

3. Domestic Septage. The person who applies domestic septage to agricultural land, forest, or a reclamation site shall develop the following information and shall retain the information for five years:

a. the location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

b. the number of acres in each site on which domestic septage is applied;

c. the date domestic septage is applied to each site;

d. the nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;

e. the rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

f. a description of how the pathogen requirements in either LAC 33:IX.3111.C.3.a or b are met;

g. a description of how the vector attraction reduction requirements in LAC 33:IX.3111.D.2.i, j, or k are met;

h. a description of how the general management practices in Clauses C.2.a.ii-vi of this Section are met; and

i. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices at LAC 33:IX.3103.C.2.a.ii-vi, the pathogen requirements in [insert either LAC 33:IX.3111.C.3.a or b] and the vector attraction reduction requirements in [insert LAC 33:IX.3111.D.2.i, j, or k] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

I. Reporting

1. All Class I sludge management facilities, as defined in LAC 33:IX.2313, that prepare sewage sludge shall submit the information in Paragraph H.1 of this Section to the state administrative authority on February 19 of each year.

2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares the sewage sludge or a material derived from sewage sludge having an Exceptional Quality Certification are as indicated in Subparagraph J.5.b of this Section.

b. All other Class I sludge management facilities, as defined in LAC 33:IX.2313, except the person in Clause H.2.d.ii of this Section who applies bulk sewage sludge to the land and the person who applies domestic septage to the land, that are required to obtain a permit under LAC 33:IX.3101.C, shall submit the information in Paragraph H.2 of this Section, except the information in Clause H.2.d.ii of this Section, for the appropriate requirements, to the state administrative authority on February 19 of each year.

c. The person referred to in Clause H.2.d.ii of this Section who applies bulk sewage sludge to the land and is required to obtain a permit under LAC 33:IX.3101.C shall submit the information in Clause H.2.d.ii of this Section to the state administrative authority on February 19 of each year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.3103.D is reached at a land application site.

d. The person who applies domestic septage to the land shall submit the information referred to in Paragraph H.3 of this Section for the appropriate requirements to the state administrative authority on February 19 of each year.

3. The state administrative authority may require any facility indicated in Subparagraph I.2.a of this Section to report any or all of the information required in Subparagraphs I.2.b-d of this Section if deemed necessary for the protection of human health or the environment.

J. Exceptional Quality Certification

1.a. The person who prepares the sewage sludge or a material derived from sewage sludge who desires to receive an Exceptional Quality Certification must prepare sewage sludge that is *Exceptional Quality* as defined in LAC 33:IX.3101.H and shall forward to the state administrative authority an Exceptional Quality Certification Request Form having the following information:

i. the laboratory analysis of the metals in Table 3 of LAC 33:IX.3103.D;

ii. the laboratory analysis for pH, percent dry solids, percent ammonia nitrogen, percent nitrate-nitrite, percent total Kjeldahl nitrogen, percent organic nitrogen, percent phosphorus, percent potassium, and percent organic matter;

iii. the laboratory results for polychlorinated biphenyls (PCBs);

iv. the Exceptional Quality pathogen requirement in LAC 33:IX.3111.C.1 used and the results obtained;

v. the vector attraction reduction requirement in LAC 33:IX.3111.D.2.a-h used and the results obtained; and

vi. for sewage sludge or a material derived from sewage sludge that is sold or given away either in bulk or in a bag, an example of the label or information sheet that will accompany the sewage sludge or material derived from sewage sludge. The label or information sheet shall contain the following information:

(a). name and address of the preparer;

(b). concentration (by volume) of each metal in Table 3 of LAC 33:IX.3103.D;

(c). total nitrogen;

(d). percent ammonia (as N);

(e). percent phosphorus;

(f). pH;

(g). concentration of PCBs in mg/kg of total solids (dry wt.); and

(h) application instructions and a statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet.

b. Samples required to be collected in accordance with Clauses J.1.a.i-v of this Section shall be from at least four representative samplings of the sewage sludge or the material derived from sewage sludge taken at least 60 days apart within the 12 months prior to the date of the submittal of an Exceptional Quality Certification Request Form.

2. The state administrative authority shall determine whether the sewage sludge or the material derived from sewage sludge is of *Exceptional Quality* as defined in LAC 33:IX.3101.H, and shall determine whether to issue an Exceptional Quality Certification, within 30 days of having received a complete form having all of the information requested in Subparagraph J.1.a of this Section.

3. Any Exceptional Quality Certification shall have a term of not more than five years.

4.a. For the term of the Exceptional Quality Certification, the preparer of the sewage sludge or material derived from sewage sludge shall conduct continued sampling at the frequency of monitoring specified in Paragraph G.1 of this Section. The samples shall be analyzed for the parameters specified in Clauses J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Clauses J.1.a.iv and v, as required by LAC 33:IX.3111.

b. If results of the sampling indicate that the sewage sludge or the material derived from sewage sludge no longer is *Exceptional Quality* as defined in LAC 33:IX.3101.H, then the preparer must cease any land application of the sewage sludge as an Exceptional Quality sewage sludge.

c. If the sewage sludge that is no longer of *Exceptional Quality* is used or disposed, the exemption for Exceptional Quality sewage sludge no longer applies and the sewage sludge must meet all the requirements and restrictions of this Subchapter that apply to a sewage sludge that is not *Exceptional Quality*.

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for *Exceptional Quality* as defined in LAC 33:IX.3101.H.

5.a. Recordkeeping. The person who prepares the sewage sludge or a material derived from sewage sludge shall develop the following information and shall retain the information for five years:

i. the results of the sample analysis required in Subparagraph J.4.a of this Section; and

ii. the following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality pathogen requirements in LAC 33:IX.3111.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.3111.D.2.a-h] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

b. Reporting. The person who prepares the sewage sludge or a material derived from sewage sludge shall forward the information required in Subparagraph J.5.a of this Section to the state administrative authority on a quarterly basis. The schedule for quarterly submission is contained in the following table.

| Schedule For Quarterly Submission | |
|---|---|
| **Monitoring Period** | **DMR Due Date** |
| January, February, March | April 28 |
| April, May, June | July 28 |
| July, August, September | October 28 |
| October, November, December | January 28 |

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074.B.(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002).

**§3107. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge**

A. Siting

1. Location Characteristics

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

b. Facilities shall not be located less than 200 feet from a residence or place of business.

c. Facilities shall not be located less than 100 feet from a private or public potable water source.

d. Facilities shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

e. Composting operations should not be located on airports. However, when they are located on an airport, composting operations should not be located closer than the greater of the following distances: 1,200 feet from any aircraft movement area, loading ramp, or aircraft parking space; or the distance called for by airport design requirements.

f. Facilities shall not be located less than 100 feet from a wetlands, surface waters (streams, ponds, lakes), or areas historically subject to overflow from floods.

g. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a three-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a three-foot depth below this zone.

h. Storage and processing of sewage sludge or any material derived from sewage sludge is prohibited within any of the buffer zones indicated in Subparagraphs A.1.a-g of this Section.

i. Facilities located in, or within, 1,000 feet of swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas by effective barriers that eliminate probable adverse impacts from facility operations.

j. Facilities located in, or within, 1,000 feet of an aquifer recharge zone shall be designed to protect the areas from adverse impacts of operations at the facility.

k. Access to facilities by land or water transportation shall be by all-weather roads or waterways that can meet the demands of the facility and are designed to avoid, to the extent practicable, congestion, sharp turns, obstructions, or other hazards conducive to accidents; and the surface roadways shall be adequate to withstand the weight of transportation vehicles.

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

i. All facilities must have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive wastes from off-site sources shall post readable signs that list the types of wastes that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care, or such services shall be provided internally.

c. Receiving and Monitoring Sewage Sludge, Other Feedstock, or Supplements Used

i. Each processing facility shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge or other feedstock or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of feedstock or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

ii. Each processing facility shall be equipped with a central control and recordkeeping system for tabulating the information required in Clause A.2.c.i of this Section.

3. Facility Surface Hydrology

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 31 degrees north latitude and 9 inches of rainfall above 31 degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

c. All storm water and wastewater from a facility must conform to applicable requirements of Subchapters A-W of this Chapter.

4. Facility Geology

a. Except as provided in Subparagraph A.4.c of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing stratum that would provide a conduit to such aquifer.

b. The natural soil surface must be capable of supporting heavy equipment operation during and after prolonged periods of rain.

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs A.4.a and b of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs A.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit application or permit modifications for all facilities must be

prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

B. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

i. A Facility Operations and Maintenance Manual shall be developed and forwarded with the permit application to the state administrative authority.

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

(a). site and project description;

(b). regulatory interfaces;

(c). process management plan;

(d). pathogen treatment plan;

(e). odor management plan;

(f). worker health and safety management plan;

(g). housekeeping and nuisance management plan;

(h). emergency preparedness plan;

(i). security, community relations, and public access plan;

(j). regulated chemicals (list and location of regulated chemicals kept on-site);

(k). recordkeeping procedures;

(l). feedstock, supplements, and process management;

(m). product distribution records;

(n). operator certification; and

(o). administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be keep on-site and readily available to employees and, if requested, to the state administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a). must be collected and disposed off-site at a permitted facility; or

(b). must be collected, treated, and discharged on-site in accordance with Subchapters A-W of this Chapter; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph B.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been

removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Permits Division confirming that the requirements of Subparagraph B.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Permits Division before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the facility, the closure and post-closure requirements for industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause B.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause B.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002).

### §3109. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge

A. Financial Responsibility During Operation. Permit holders or applicants for standard permits have the following financial responsibilities while the facility is in operation.

1. Permit holders and applicants must maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of $1 million per occurrence and $1 million annual aggregate, per site, exclusive of legal-defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Management and Finance, Financial Services Division.

2. The financial responsibility may be established by any one or a combination of the following.

a. Evidence of liability insurance may consist of either a signed duplicate original of a commercial blender, composter, or mixer of sewage sludge liability endorsement, or a certificate of insurance. All liability endorsements and certificates of insurance must include:

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with the following Subclauses (a)-(f) are amended to conform with said subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Paragraph A.3, 4, or 5 of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written

notice is received by the Office of Management and Finance, Financial Services Division;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Management and Finance, Financial Services Division; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in Louisiana.

b. The wording of the liability endorsement shall be identical to the wording in Document 1 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

c. The wording of the certificate of insurance shall be identical to the wording in Document 2 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements, and by submitting the letter to the administrative authority.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

i. agency interest number;

ii. site name;

iii. facility name;

iv. facility permit number; and

v. the amount of funds assured for liability coverage of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Management and Finance, Financial Services Division receive the notice, as evidenced by the return receipts.

e. The wording of the letter of credit shall be identical to the wording in Document 3 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

4. Financial Test

a. To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Management and Finance, Financial Services Division the documents required by Subsection B of this Section demonstrating that the requirements of Subsection B of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

b. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Paragraph A.5 of this Section.

c. The wording of the financial test shall be as specified in Subparagraph B.8.d of this Section.

5. Corporate Guarantee

a. A permit holder or applicant may meet the requirements of Paragraph A.1 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial-test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial blender, composter, or mixer of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

iv. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial-test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Management and Finance, Financial Services Division, and to the permit holder or applicant, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the

guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

v. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vi. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial-test criteria or that he or she is disallowed from continuing as a guarantor of closure or post-closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;

vii. the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

viii. the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;

ix. the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;

x. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s);

xi. the wording of the corporate guarantee shall be as specified in Subparagraph B.8.i of this Section.

b. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Management and Finance, Financial Services Division that a corporate guarantee is a legally valid and enforceable obligation in that state.

6. The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.

7. Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other feedstock, or supplements are first received for processing.

B. Financial Responsibility for Closure and Post-Closure Care

1. Permit holders or applicants have the following financial responsibilities for closure and post-closure care.

a. Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.

b. The applicant or permit holder shall submit to the Office of Management and Finance, Financial Services Division the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

i. The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Clauses B.1.b.i-ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Management and Finance, Financial Services Division within 15 days following such adjustment.

iv. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the

pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post-closure estimates for each facility covered.

d. When all closure and post-closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

3. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Management and Finance, Financial Services Division.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust-fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the permit holder or applicant upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.

e. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause B.1.b.iv of this Section.

f. If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Paragraph.

g. After the pay-in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post-closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in Document 4 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in Document 4 of Appendix R of this Chapter.

4. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the operator will:

i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or

iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost-estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in Document 5 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

5. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Management and Finance, Financial Services Division.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the permit holder or applicant will:

i. perform final closure and post-closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after the date both the permit holder and the administrative authority receive notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post-closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts.

h. The wording of the performance bond shall be identical to the wording in Document 6 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Management and Finance, Financial Services Division.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the

letter of credit by number, issuing institution, and date, and providing the following information:

i. agency interest number;

ii. site name;

iii. facility name;

iv. facility permit number; and

v. the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Management and Finance, Financial Services Division by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the permit holder has failed to perform final closure or post-closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in Document 7 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. Insurance. A permit holder or applicant may satisfy the requirements of this Section by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Management and Finance, Financial Services Division.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure and post-closure cost estimates.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility and provide post-closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

e. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Management and Finance, Financial Services Division. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.

g. Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Management and Finance, Financial Services Division. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

i. the administrative authority deems the facility abandoned;

ii. the permit is terminated or revoked or a new permit is denied;

iii. closure and/or post-closure is ordered;

iv. the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code; or

v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Management and Finance, Financial Services Division, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure

and post-closure cost estimates following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in Document 8 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

8. Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Paragraph A.5 of this Section.

a. To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:

i. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least $10 million; and

(c). assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least $10 million; and

(c). assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to the Office of Management and Finance, Financial Services Division:

i. a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subparagraph B.8.a of this Section and including the information required by Subparagraph B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

ii. a copy of the independent certified public accountant (CPA)'s report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and

iii. a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Management and Finance, Financial Services Division a letter from the chief financial officer, the wording of which shall be identical to the wording in Document 9 of Appendix R of this Chapter, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

i. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

ii. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

iii. a list of the commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure and/or post-closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure or post-closure care for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for closure or post-closure care is not demonstrated through the financial test, self-insurance, or other substantially equivalent state

mechanisms, including the estimated cost of closure and post-closure of such facilities.

e. For the purposes of this Subsection the phrase "tangible net worth" shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase "current closure and post-closure cost estimates," as used in Subparagraph B.8.a of this Section, includes the cost estimates required to be shown in Subclause B.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subparagraph B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Management and Finance, Financial Services Division within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subparagraph B.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Paragraph B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subparagraph B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subparagraph B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. A permit holder or applicant may meet the requirements of Paragraph B.8 of this Section for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subparagraphs B.8.a-h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in Document 10 of Appendix R of this Chapter, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

ii. the guarantor is the parent corporation of the permit holder or applicant of the commercial blender, composter, or mixer of sewage sludge facility or facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. "closure plans," as used in the guarantee, refers to the plans maintained as required by the Louisiana commercial blender, composter, or mixer of sewage sludge rules and regulations for the closure and post-closure care of facilities, as identified in the guarantee;

iv. for value received from the permit holder or applicant, the guarantor guarantees to the Louisiana Department of Environmental Quality that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph B.3 of this Section, in the name of the permit holder or applicant, in the amount of the current closure or post-closure cost estimates or as specified in Subparagraph B.1.b of this Section;

v. guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Management and Finance, Financial Services Division and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

vi. the guarantor agrees to notify the Office of Management and Finance, Financial Services Division by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Management and Finance, Financial Services Division and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the

administrative authority and the permit holder or applicant, as evidenced by the return receipts;

x. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

9. Local Government Financial Test. An owner or operator that satisfies the requirements of Subparagraphs B.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph B.9.d of this Section.

a. Financial Component

i. The owner or operator must satisfy the following conditions, as applicable:

(a). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

ii. The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under Paragraph B.9 of this Section if it:

(a). is currently in default on any outstanding general obligation bonds;

(b). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Clause B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Subsection are defined as follows.

(a). *Deficit*—total annual revenues minus total annual expenditures.

(b). *Total Revenues*—revenues from all taxes and fees, but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(d). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Government Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government owner or operator must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subparagraph B.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses B.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses B.9.a.i-iii and Subparagraphs B.9.b and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Subclause B.9.a.i.(b) of this Section, if applicable, and the requirements of Clause B.9.a.ii and Subclauses B.9.a.iii.(c)-(d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph

B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Clause B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

iv. The local government owner or operator is no longer required to meet the requirements of Subparagraph B.9.c of this Section when:

(a). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Management and Finance, Financial Services Division that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Paragraph B.9 of this Section is determined as follows:

i. if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Paragraph B.9 of this Section. The total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Clauses B.9.d.i - ii of this Section.

10. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post-closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Paragraph B.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post-closure care. The guarantee must provide that:

i. if the owner or operator fails to perform closure and post-closure care, of a facility covered by the guarantee, the guarantor will:

(a). perform, or pay a third party to perform, closure and post-closure care as required; or

(b). establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the owner or operator;

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Management and Finance, Financial Services Division. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

iii. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division.

b. Recordkeeping and Reporting

i. The owner or operator must place a certified copy of the guarantee, along with the items required under Subparagraph B.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post-closure care.

ii. The owner or operator is no longer required to maintain the items specified in Clause B.10.b.i of this Section when:

(a). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.

iii. If a local government guarantor no longer meets the requirements of Paragraph B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Management and Finance, Financial Services Division. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Paragraphs B.3-8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Management and Finance, Financial Services Division so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002).

**§3111. Pathogens and Vector Attraction Reduction**

A. Scope. This Section contains the following:

1. the requirements for a sewage sludge to be classified either *Exceptional Quality* or Class B with respect to pathogens;

2. the site restrictions for land on which a Class B sewage sludge is applied;

3. the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site; and

4. alternative vector attraction reduction requirements for sewage sludge that is applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.3101.H, the following definitions apply to this Section:

*Aerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

*Anaerobic Digestion*—the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

*Density of Microorganisms*—the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

*Land With a High Potential for Public Exposure*—land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

*Land With a Low Potential for Public Exposure*—land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

*Pathogenic Organisms*—disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*pH*—the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° C or measured at another temperature and then converted to an equivalent value at 25° C.

*Specific Oxygen Uptake Rate (SOUR)*—the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

*Total Solids*—the materials in sewage sludge that remain as residue when the sewage sludge is dried to a constant weight at 103° to 105° C.

*Unstabilized Solids*—organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

*Vector Attraction*—the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Volatile Solids*—the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550° C in the presence of excess air.

C. Pathogens

1. Sewage Sludge**C**Exceptional Quality

a. The requirement in Subparagraph C.1.b of this Section and the requirements in either Subparagraph C.1.c, d, e, f, g, or h of this Section shall be met for a sewage sludge to be classified *Exceptional Quality* with respect to pathogens.

b. The Exceptional Quality pathogen requirements in Subparagraphs C.1.c-h of this Section shall be met either prior to meeting or at the same time the vector attraction reduction requirements in Subsection D of this Section, except the vector attraction reduction requirements in Subparagraphs D.2.f-h of this Section, are met.

c. Exceptional Quality**C**Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is

prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(a). When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50° C or higher, the time period shall be 20 minutes or longer, and the temperature and time period shall be determined using equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131{,}700{,}000}{10^{0.1400t}} \qquad \text{Equation (2)}$$

Where:
D = time in days.
t = temperature in degrees Celsius.

(b). When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50° C or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall be determined using equation (2).

(c). When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (2).

(d). When the percent solids of the sewage sludge is less than 7 percent, the temperature of the sewage sludge is 50° C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (3).

$$D = \frac{50{,}070{,}000}{10^{0.1400t}} \qquad \text{Equation (3)}$$

Where:
D = time in days.
t = temperature in degrees Celsius.

d. Exceptional Quality **C** Alternative 2

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii.(a). The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(b). The temperature of the sewage sludge shall be above 52° C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(c). At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

e. Exceptional Quality **C** Alternative 3

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(b). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(c). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(d). After the enteric virus reduction in Subclause C.1.e.ii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be *Exceptional Quality* with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.ii.(c) of this Section.

iii.(a). The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(b). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(c). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is *Exceptional Quality* with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less

than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(d). After the viable helminth ova reduction in Subclause C.1.e.iii.(c) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be *Exceptional Quality* with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.iii.(c) of this Section.

f. Exceptional Quality**C**Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in LAC 33:IX.3103.A.2.a and 3.a, unless otherwise specified by the permitting authority.

iii. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

g. Exceptional Quality**C**Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in Appendix Q of this Chapter.

h. Exceptional Quality**C**Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp*. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.3101.H.

ii. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens, as determined by the permitting authority.

2. Sewage Sludge**C**Class B

a.i. The requirements in either of Subparagraph C.2.b, c, or d of this Section shall be met for a sewage sludge to be classified Class B with respect to pathogens.

ii. The site restrictions in Subparagraph C.2.e of this Section shall be met when sewage sludge that meets the Class B pathogen requirements in Subparagraph C.2.b, c, or d of this Section is applied to the land.

b. Class B**C**Alternative 1

i. Seven representative samples of the sewage sludge that is used or disposed shall be collected.

ii. The geometric mean of the density of fecal coliform in the samples required by Clause C.2.b.i of this Section shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

c. Class B**C**Alternative 2. Sewage sludge that is used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in Appendix Q of this Chapter.

d. Class B**C**Alternative 3. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens, as determined by the permitting authority.

e. Site Restrictions

i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

v. Animals shall not be grazed on the land for 30 days after application of sewage sludge.

vi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

vii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge, by means approved by the administrative authority.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge, by means approved by the administrative authority.

3. Domestic Septage. For domestic septage applied to agricultural land, forest, or a reclamation site:

a. the site restrictions in Subparagraph C.2.e of this Section shall be met; or

b. the pH of the domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes and the site restrictions in Clauses C.2.e.i - iv of this Section shall be met.

D. Vector Attraction Reduction

1.a. One of the vector attraction reduction requirements in Subparagraphs D.2.a - j of this Section shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in Subparagraphs D.2.a - h of this Section shall be met when bulk sewage sludge is applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in Subparagraphs D.2.a - h of this Section shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

d. One of the vector attraction reduction requirements in Subparagraph D.2.i, j, or k of this Section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

2.a. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent (see calculation procedures in *Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge*, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

b. When the 38 percent volatile solids reduction requirement in Subparagraph D.2.a of this Section cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

c. When the 38 percent volatile solids reduction requirement in Subparagraph D.2.a of this Section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

d. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.

e. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.

f. The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

g. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

h. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

i.i. Sewage sludge shall be injected below the surface of the land.

ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

iii. When the sewage sludge that is injected below the surface of the land is *Exceptional Quality* with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

j.i. Sewage sludge applied to the land surface shall be incorporated into the soil within six hours after application to the land, unless otherwise specified by the permitting authority.

ii. When sewage sludge that is incorporated into the soil is Exceptional Quality with respect to pathogens, the sewage sludge shall be applied to the land within eight hours after being discharged from the pathogen treatment process.

k. The pH of domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002).

**§3113. Incineration**

A. Applicability

1. This Section applies to a person who fires only sewage sludge or sewage sludge and auxiliary fuel, as defined in Subsection B of this Section, in a sewage sludge incinerator, to a sewage sludge incinerator, as defined in Subsection B of this Section, and to sewage sludge or sewage sludge and auxiliary fuel fired in a sewage sludge incinerator.

2. This Section applies to the exit gas from a sewage sludge incinerator stack.

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.3101.H and in LAC 33:III.111.

*Air Pollution Control Device*—one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

*Auxiliary Fuel*—fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

*Average Daily Concentration*—the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

*Control Efficiency*—the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

*Dispersion Factor*—the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

*Fluidized Bed Incinerator*—an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

*Hourly Average*—the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

*Incineration*—the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Incinerator Operating Combustion Temperature*—the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

*Monthly Average*—the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

*Performance Test Combustion Temperature*—the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

*Risk Specific Concentration*—the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

*Sewage Sludge Feed Rate*—either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

*Sewage Sludge Incinerator*—an enclosed device in which only sewage sludge or sewage sludge and auxiliary fuel are fired.

*Stack Height*—the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 214 feet (65 meters). When the difference is greater than 214 feet (65 meters), stack height is the creditable stack height determined in accordance with LAC 33:III.921.

*Standard*—a standard of performance proposed or promulgated under this Subchapter.

*Stationary Source*—any building, structure, facility, or installation that emits or may emit any air pollutant.

*Total Hydrocarbons*—the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

*Wet Electrostatic Precipitator*—an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

*Wet Scrubber*—an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

C. General Requirements

1. No person shall fire sewage sludge or sewage sludge and auxiliary fuel in a sewage sludge incinerator except in compliance with the requirements in this Section.

2. Performance Tests for New Stationary Sources

a. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the state administrative authority, the owner or operator of such facility shall conduct performance test(s) and furnish the state administrative authority a written report of the results of such performance test(s).

b. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained for each applicable requirement in Subsections D, E, and F of this Section, unless the state administrative authority:

i. specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

ii. approves the use of an equivalent method;

iii. approves the use of an alternative method the results of which have been determined by the state administrative authority to be adequate for indicating whether a specific source is in compliance;

iv. waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means, to the state administrative authority's satisfaction, that the affected facility is in compliance with the standard; or

v. approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this Subparagraph shall be construed to abrogate the state administrative authority's right to require additional testing if deemed necessary for

proper determination of the standard of performance of the new stationary source.

c. Performance tests shall be conducted under such conditions as the state administrative authority shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the state administrative authority such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

d. The owner or operator of an affected facility shall provide the state administrative authority at least 30 days prior notice of any performance test, except as otherwise specified in this Subsection, to afford the state administrative authority the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the state administrative authority as soon as possible of any delay in the original test date either by providing at least seven days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the state administrative authority by mutual agreement.

e. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

i. sampling ports adequate for test methods applicable to such facility, including:

(a). constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(b). providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

ii. safe sampling platform(s);

iii. safe access to sampling platform(s); and

iv. utilities for sampling and testing equipment.

f. Unless otherwise specified in the applicable parts of this Paragraph, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the state administrative authority's approval, be determined using the arithmetic mean of the results of the two other runs.

3. In conducting the performance tests required in Paragraph C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.3101.G or other methods and procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

4.a. The owner or operator of any sewage sludge incinerator subject to the provisions of this Subchapter shall conduct a performance test during which the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section are installed and operating and for which the sampling and analysis procedures required under Subparagraph G.1.d of this Section are performed as follows:

i. for incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations, unless the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section were installed and operating and the sampling and analysis procedures required under Subparagraph G.1.d of this Section were performed during the most recent performance test and a record of the measurements taken during the performance test is available for review by the state administrative authority; and

ii. for incinerators that commence construction or modification on or after the effective date of these regulations, the date of the performance test shall be determined by the requirements in Paragraph C.2 of this Section.

b. The owner or operator shall provide the state administrative authority at least 30 days prior notice of the performance test to afford the state administrative authority the opportunity to have an observer present.

5. The owner or operator of any sewage sludge incinerator, other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan to the state administrative authority for approval for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the state administrative authority as follows:

a. no later than 90 days after October 6, 1988, for sources that have provided notification of commencement of construction prior to October 6, 1988;

b. no later than 90 days after the notification of commencement of construction, for sources that provide notification of commencement of construction on or after October 6, 1988; and

c. at least 90 days prior to the date on which the new control device becomes operative for sources switching to a control device other than a wet scrubber.

D. Pollutant Limits

1. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

2. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

3. Pollutant Limit**C**Lead

a. The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using Equation (4).

$$C = \frac{0.1 \times NAAQS \times 86{,}400}{DF \times (1 - CE) \times SF} \qquad \text{Equation (4)}$$

Where:

C = average daily concentration of lead in sewage sludge.

NAAQS = national Ambient Air Quality Standard for lead in micrograms per cubic meter.

DF = dispersion factor in micrograms per cubic meter per gram per second.

CE = sewage sludge incinerator control efficiency for lead in hundredths.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The dispersion factor (DF) in equation (4) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge stack height is 214 feet (65 meters) or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (4).

ii. When the sewage sludge incinerator stack height exceeds 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

c. The control efficiency (CE) for Equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

4. Pollutant Limit**C**Arsenic, Cadmium, Chromium, and Nickel

a. The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using Equation (5).

$$C = \frac{RSC \times 86{,}400}{DF \times (1 - CE) \times SF} \qquad \text{Equation (5)}$$

Where:

C = average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge.

CE = sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths.

DF = dispersion factor in micrograms per cubic meter per gram per second.

RSC = risk specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter.

SF = sewage sludge feed rate in metric tons per day (dry weight basis).

b. The risk specific concentrations for arsenic, cadmium, and nickel used in Equation (5) shall be obtained from Table 1 of LAC 33:IX.3113.D.

**Table 1 of LAC 33:IX.3113.D**
**Risk Specific Concentration for Arsenic, Cadmium, and Nickel**

| Pollutant | Risk Specific Concentration (micrograms per cubic meter) |
|---|---|
| Arsenic | 0.023 |
| Cadmium | 0.057 |
| Nickel | 2.0 |

c. The risk specific concentration for chromium used in Equation (5) shall be obtained from Table 2 of LAC 33:IX.3113.D or shall be calculated using Equation (6).

**Table 2 of LAC 33:IX.3113.D**
**Risk Specific Concentration For Chromium**

| Type of Incinerator | Risk Specific Concentration (micrograms per cubic meter) |
|---|---|
| Fluidized bed with wet scrubber | 0.65 |
| Fluidized bed with wet scrubber and wet electrostatic precipitator | 0.23 |
| Other types with wet scrubber | 0.064 |
| Other types with wet scrubber and wet electrostatic precipitator | 0.016 |

$$RSC = \frac{0.0085}{r} \qquad \text{Equation (6)}$$

Where:

RSC = risk specific concentration for chromium in micrograms per cubic meter used in equation (5).

r = decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths.

d. The dispersion factor (DF) in Equation (5) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge incinerator stack height is equal to or less than 214 feet (65 meters), the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (5).

ii. When the sewage sludge incinerator stack height is greater than 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (5).

e. The control efficiency (CE) for Equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

5. Air Dispersion Modeling and Performance Testing

a. The air dispersion model used to determine the dispersion factor in Subparagraphs D.3.b and 4.d of this Section shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section shall be appropriate for the type of sewage sludge incinerator.

b. For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the state administrative authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

c. The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section after September 3, 1999:

i. the performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator;

ii. the state administrative authority shall be notified at least 30 days prior to any performance test so the state administrative authority may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used; and

iii. each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

d. The pollutant limits in Paragraphs D.3 and 4 of this Section shall be submitted to the state administrative authority no later than 30 days after completion of the air dispersion modeling and performance test.

e. Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

6. Standards for Particulate Matter

a. No owner or operator of any sewage sludge incinerator subject to the provisions of this Section shall discharge or cause the discharge into the atmosphere of:

i. particulate matter at a rate in excess of 0.65 g/kg dry sewage sludge input (1.30 lb/ton dry sewage sludge input); and

ii. any gases that exhibit 20 percent opacity or greater.

b. The owner or operator of a sewage sludge incinerator shall determine compliance with the particulate matter emission standards in Subparagraph D.6.a of this Section as follows:

i. the emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = K(C_S\ Q_{sd})/S$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sewage sludge input.

$C_s$ = concentration of particulate matter, g/dscm (g/dscf).

$Q_{sd}$ = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = charging rate of dry sewage sludge during the run, kg/hr (lb/hr).

K = conversion factor, 1.0 g/g [4.409 $lb^2$/(g-ton)];

ii. method 5 shall be used to determine the particulate matter concentration ($C_s$) and the volumetric flow rate ($Q_{sd}$) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf);

iii. the dry sewage sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m\ R_{dm}/\Theta$$

$$S = K_v S_v\ R_{dv}/\Theta$$

where:

S = charging rate of dry sewage sludge, kg/hr (lb/hr).

$S_m$ = total mass of sewage sludge charged, kg (lb).

$R_{dm}$ = average mass of dry sewage sludge per unit mass of sludge charged, mg/mg (lb/lb).

?= duration of run, in minutes.

$K_m$ = conversion factor, 60 min/hr.

$S_v$ = total volume of sewage sludge charged, $m^3$ (gal).

$R_{dv}$ = average mass of dry sewage sludge per unit volume of sewage charged, mg/liter ($lb/ft^3$).

$K_v$ = conversion factor, 60 X $10^{-3}$ (liter-kg-min)/($m^3$-mg-hr) [8.021 ($ft^3$-min)/(gal-hr)].

iv. the flow measuring device of Paragraph F.2 of this Section shall be used to determine the total mass ($S_m$) or volume ($S_v$) of sewage sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sewage sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^{n} Q_{mi}/\Theta_i$$

$$S_v = \sum_{i=1}^{n} Q_{vi}/\Theta_i$$

where:

$Q_{mi}$ = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (gal/min).

$Q_{vi}$ = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", $m^3$/min (gal/min).

$?_i$ = duration of interval "i", min;

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "209 F. Method for Solid and Semisolid Samples" (40 CFR 60.17, incorporated by reference in LAC 33:III.3003) shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

(a). evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in step 3(a)(1);

(b). determination of volatile residue, step 3(b) may be deleted;

(c). the quantity of dry sewage sludge per unit sewage sludge charged shall be determined in terms of mg/liter ($lb/ft^3$) or mg/mg (lb/lb); and

(d). the average dry sewage sludge content shall be the arithmetic average of all the samples taken during the run; and

vi. method 9 and the procedures in 40 CFR 60.11 (incorporated by reference in LAC 33:III.3003) shall be used to determine opacity.

E. Operational Standard**C**Total Hydrocarbons

1. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected for 0 percent moisture by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (7).

$$Correction\ \ factor\ (percent\ moisture) = \frac{1}{(1-X)} \quad \text{Equation (7)}$$

Where:

X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths.

2. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected to 7 percent oxygen by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (8).

$$Correction factor\ (oxygen) = \frac{14}{(21-Y)} \quad \text{Equation (8)}$$

Where:

Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume).

3. The monthly average concentration for total hydrocarbons in the exit gas from a sewage sludge incinerator stack, corrected for 0 percent moisture using the correction factor from Equation (7) and to 7 percent oxygen using the correction factor from Equation (8), shall not exceed 100 parts per million on a volumetric basis when measured using the instrument required by Paragraph F.5 of this Section.

F. Management Practices

1. The owner or operator of a sewage sludge incinerator shall provide access to the sewage sludge charged so that a well-mixed representative grab sample of the sewage sludge can be obtained.

2.a. A flow measuring device that can be used to determine either the mass or volume of sewage sludge charged to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

c. The flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

3.a. A weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together shall be installed, calibrated, maintained, and properly operated.

b. The weighing device shall have an accuracy of ±5 percent over its operating range.

4.a. For incinerators equipped with a wet scrubbing device, a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device shall be installed, calibrated, maintained, and properly operated.

b. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored.

c. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within ± 250 pascals (±1 inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

5.a. An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The total hydrocarbons instrument shall employ a flame ionization detector, have a heated sampling line maintained at a temperature of 150° C or higher at all times, and be calibrated at least once every 24-hour operating period using propane.

6.a. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

b. The oxygen monitor shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air.

c. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of ±5 percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

7. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

8.a. An instrument that continuously records combustion temperature at every hearth in multiple hearth furnaces, in the bed and outlet of fluidized bed incinerators, and in the drying, combustion, and cooling zones of electric incinerators shall be installed, calibrated, maintained, and properly operated.

b. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone.

c. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone.

d. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

e. Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

9.a. A device for measuring the fuel flow to the incinerator shall be installed, calibrated, maintained, and properly operated.

b. The fuel flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

c. The fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless specified otherwise by the state administrative authority.

10.a. An air pollution control device shall be appropriate for the type of sewage sludge incinerator and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device.

b. Operation of the air pollution control device shall not cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by Subparagraphs D.3.c and 4.e of this Section nor shall the operation of the air pollution control device violate any other requirements of this Section for which the air pollution control device is subjected.

11. The permittee shall collect and analyze sewage sludge fed to a sewage sludge incinerator for dry sludge content and volatile solids content using the method specified at Clause D.6.b.v of this Section, except that the determination of volatile solids, step (3)(b) of the method shall not be deleted.

12. Sewage sludge shall not be fired in a sewage sludge incinerator if it is likely to adversely affect a threatened or endangered species, listed under Section 4 of the Endangered Species Act, or its designated critical habitat.

13. The instruments required in Paragraphs F.2 - 9 of this Section shall be appropriate for the type of sewage sludge incinerator.

14. The state administrative authority may exempt the owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from the daily sampling and analysis of sludge feed in Paragraphs F.11 and Subparagraph G.1.d of this Section and from the recordkeeping requirement in Subparagraph H.2.p of this Section for the volatile solids content, only, of the sewage sludge charged to the incinerator during all periods of this incinerator following the performance test if:

a. the particulate matter emission rate measured during the performance test required under Paragraph C.4 of this Section is less than or equal to 0.38 g/kg of dry sewage sludge input (0.75 lb/ton); and

b. the state administrative authority determines that the requirements will not be necessary to evaluate the effects upon the environment and human health resulting from the emissions from the sewage sludge incinerator.

G. Frequency of Monitoring. Except as specified otherwise in this Section, the frequency of monitoring shall be as follows:

1. Sewage Sludge

a. The frequency of monitoring for beryllium shall be as required in Subpart C of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116), and for mercury as required in Subpart E of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116).

b. The frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel in sewage sludge fed to a sewage sludge incinerator shall be the frequency in Table 1 of LAC 33:IX.3113.G.

**Table 1 of LAC 33:IX.3113.G**

**Frequency of Monitoring – Incineration**

| Amount of sewage sludge[1] (metric tons per 365-day period) | Frequency |
|---|---|
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1,500 | Once per quarter (4 times per year) |
| Equal to or greater than 1,500 but less than 15,000 | Once per 60 days (6 times per year) |
| Equal to or greater than 15,000 | Once per month (12 times per year) |

[1] Amount of sewage sludge fired in a sewage sludge incinerator (dry weight basis)

c. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.3113.G, the state administrative authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

d. The frequency of monitoring for dry sewage sludge content and volatile solids content of the sewage sludge shall be once per day as a grab sample of the sewage sludge fed to the incinerator.

2. Total Hydrocarbons, Oxygen Concentration, Information to Determine Moisture Content, and Combustion Temperatures. The total hydrocarbons concentration and oxygen concentration in the exit gas from a sewage sludge incinerator stack, the information used to measure moisture content in the exit gas, and the combustion temperatures for the sewage sludge incinerator shall be monitored continuously.

3. Air Pollution Control Device Operating Parameters. Unless specified otherwise in this Subchapter, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be daily.

4.a. The frequency of monitoring shall be as specified in this Section for any performance testing or other sampling requirements not covered above.

b. If the frequency of monitoring is not specified, then the frequency of monitoring shall be as specified by the state administrative authority.

H. Recordkeeping

1. If the owner/operator of a sewage sludge incinerator is the person who prepares sewage sludge, the owner/operator of the sewage sludge incinerator shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. The owner/operator of a sewage sludge incinerator shall develop the following information and shall retain this information for five years:

a. the concentration of lead, arsenic, cadmium, chromium, and nickel in the sewage sludge fed to the sewage sludge incinerator;

b. the total hydrocarbons concentrations in the exit gas from the sewage sludge incinerator stack;

c. information that indicates the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

d. information that indicates the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

e. the operating combustion temperatures for the sewage sludge incinerator;

f. values for the air pollution control device operating parameters;

g. the oxygen concentration and information used to measure moisture content in the exit gas from the sewage sludge incinerator stack;

h. the sewage sludge feed rate;

i. the stack height for the sewage sludge incinerator;

j. the dispersion factor for the site where the sewage sludge incinerator is located;

k. the control efficiency for lead, arsenic, cadmium, chromium, and nickel for each sewage sludge incinerator;

l. the risk specific concentration for chromium calculated using Equation (6), if applicable;

m. a calibration and maintenance log for the instruments used to measure the total hydrocarbons concentration and oxygen concentration in the exit gas from the sewage sludge incinerator stack, the information needed to determine moisture content in the exit gas, and the combustion temperatures;

n. results of the particulate matter testing required in Subparagraph D.6.b of this Section;

o. for incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas flow through the wet scrubbing device, as required by Paragraph F.4 of this Section;

p. a record of the rate of sewage sludge fed to the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sewage sludge charged to the incinerator; and

q. results of all applicable performance tests required in this Section.

I. Reporting

1. If the owner/operator of a sewage sludge incinerator is the person who prepares the sewage sludge, the owner/operator shall submit the information in Paragraph H.1 of this Section to the state administrative authority on February 19 of each year.

2. The owner/operator of a sewage sludge incinerator shall submit the information in Subparagraphs H.2.a - q of this Section to the state administrative authority on February 19 of each year.

3.a. In addition to the reporting requirements in Paragraphs I.1 and 2 of this Section, the owner/operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator subject to the provisions of this Subchapter shall submit to the state administrative authority on February 19 and August 19 of each year (semiannually) a report in writing that contains the following:

i. a record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

(a). for incinerators that achieved an average particulate matter emission rate of 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported; and

(b). for incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation:

$$P = -111E + 72.15$$

where:
P = percent reduction in pressure drop.
E = average particulate matter emissions (kg/megagram); and

ii. a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.

b. The owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from which the average particulate matter emission rate measured during the performance test required at Paragraph C.4 of this Section exceeds 0.38 g/kg of dry sewage sludge input (0.75 lb/ton of dry sewage sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported, a record of the following:

i. scrubber pressure drop averaged over each 1-hour incinerator operating period;

ii. oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period;

iii. temperatures of every hearth in multiple hearth incinerators, the bed and outlet of fluidized bed incinerators, and the drying, combustion, and cooling zones of electric incinerators averaged over each 1-hour incinerator operating period;

iv. rate of sewage sludge charged to the incinerator averaged over each 1-hour incinerator operating period;

v. incinerator fuel use averaged over each 8-hour incinerator operating period; and

vi. moisture and volatile solids content of the daily grab sample of sewage sludge charged to the incinerator.

c. The owner or operator of any sewage sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator

equipped with a control device other than a wet scrubber shall include in the semiannual report a record of control device operation measurements, as specified in the plan approved under Paragraph C.5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002).

## Appendix P
## Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge

LAC 33:IX.3103.D.1.d.ii requires that the product of the concentration for each pollutant listed in Table 4 of LAC 33:IX.3103.D in sewage sludge sold or given away in a bag or other container for application to the land and the annual whole sludge application rate (AWSAR) for the sewage sludge not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.3103.D to be exceeded. This Appendix contains the procedure used to determine the AWSAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.3103.D to be exceeded.

The relationship between the annual pollutant loading rate (APLR) for a pollutant and the annual whole sludge application rate (AWSAR) for a sewage sludge is shown in Equation (1).

$$APLR = C \times AWSAR \times 0.001 \quad \text{Equation (1)}$$

Where:

APLR = annual pollutant loading rate in kilograms per hectare per 365-day period.

C = pollutant concentration in milligrams per kilogram of total solids (dry weight basis).

AWSAR = annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis).

0.001 = a conversion factor.

To determine the AWSAR, Equation (1) is rearranged into equation (2):

$$AWSAR = \frac{APLR}{C \times 0.001} \quad \text{Equation (2)}$$

The procedure used to determine the AWSAR for a sewage sludge is presented below.

Procedure:

1. Analyze a sample of the sewage sludge to determine the concentration for each of the pollutants listed in Table 4 of LAC 33:IX.3103.D in the sewage sludge.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of LAC 33:IX.3103.D, calculate an AWSAR for each pollutant using Equation (2) above.

3. The AWSAR for the sewage sludge is the lowest AWSAR calculated in Step 2.

## Appendix Q
## Pathogen Treatment Processes

A. Processes to Significantly Reduce Pathogens (PSRP)

1. Aerobic Digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air Drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic Digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime Stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

B. Processes to Further Reduce Pathogens (PFRP)

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat Drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat Treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic Aerobic Digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55° to 60°C.

5. Beta Ray Irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

6. Gamma Ray Irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as $^{60}$Cobalt and $^{137}$Cesium, at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

## Appendix R
## Financial Assurance Documents

### Document 1. Liability Endorsement

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE LIABILITY ENDORSEMENT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.3109.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

### Document 2. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A. The coverage applies at [list agency interest number, site name, facility name, facility permit number, and site address] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.3109.A.3, 4, or 5.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.A.2.c, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]

[Typed name of authorized representative of insurer]

[Title of authorized representative of insurer]

[Address of authorized representative of insurer]

**Document 3. Letter of Credit**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number, site name, facility name, and facility permit number] at [location], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial blender, composter, or mixer of sewage sludge site at the [name of permit holder or applicant] at [site location] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.3109.A.3.e, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

**Document 4. Trust Agreement**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of permit holder or applicant], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of" or "a national bank" or a "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the state of Louisiana, has established certain regulations applicable to the Grantor, requiring that a permit holder or applicant for a permit of a commercial blender, composter, or mixer of sewage sludge processing facility shall provide assurance that funds will be available when needed for [closure and/or post-closure] care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by

the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.3.i, on the date first written above.

WITNESSES: GRANTOR:

_____ _____

_____ By:_____

Its:_____

[Seal]

TRUSTEE:

_____

By:_____

Its:_____

[Seal]

THUS DONE AND PASSED in my office in _____, on the _____ day of _____, 20_____, in the presence of _____ and _____, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

_____

Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

_____

_____

_____

NOTARY PUBLIC

**Document 5. Surety Bond**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY FINANCIAL GUARANTEE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure and/or post-closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: $ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composter, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.3109.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composter, or mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.4.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETIES

[Name and Address]

State of incorporation:_____

Liability limit:_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[This information must be provided for each cosurety]

Bond Premium: $_____

**Document 6. Performance Bond**

COMMERCIAL BLENDER, COMPOSTER,
OR MIXER OF SEWAGE SLUDGE
FACILITY PERFORMANCE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the commercial blender, composter, or mixer of sewage sludge facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure and/or post-closure care, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other

requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.3107.B.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.3107.B.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.3109.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.3109.B and the conditions of the commercial blender, composter, or mixer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.3109.B.5.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY

[Name and address]

State of incorporation:_____

Liability limit: $_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

**Document 7. Letter of Credit**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY IRREVOCABLE LETTER OF CREDIT

Secretary

Louisiana Department of Environmental Quality

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post-closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars $_____ upon presentation of:

(i). A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

**Document 8. Certificate of Insurance**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY
CERTIFICATE OF INSURANCE
FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer: _____
(hereinafter called the "Insurer")

Name and Address of Insured: _____
(hereinafter called the "Insured") (Note: Insured must be the permit holder or applicant)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post-closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.3109.B, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.3109.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:_____

[Date]

**Document 9. Letter from the Chief Financial Officer**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY
LETTER FROM THE CHIEF FINANCIAL OFFICER (LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE)

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231

Attention: Office of Management and Finance, Financial Services Division

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "*Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.A," "LAC 33:IX.3109.B," or LAC 33:IX.3109.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or

not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.3109.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.3109.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.3109.B" or "LAC 33:IX.3109.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial blender, composter, or mixer of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.3109.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated $ _____
*2. Current assets $ _____
*3. Current liabilities $ _____
*4. Tangible net worth $ _____
*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets $ _____

| | YES | NO |
|---|---|---|
| 6. Is line 4 at least $10 million? | _____ | _____ |
| 7. Is line 4 at least 6 times line 1? | _____ | _____ |
| *8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9. | _____ | _____ |
| 9. Is line 4 at least 6 times line 1? | _____ | _____ |

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated $ _____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
*5. Tangible net worth $ _____
*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) $ _____

| | YES | NO |
|---|---|---|
| 7. Is line 5 at least $10 million? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| *9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

PART B. CLOSURE AND/OR POST CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above) $ _____
*2. Tangible net worth $ _____
*3. Net worth $ _____
*4. Current Assets $ _____
*5. Current liabilities $ _____
*6. The sum of net income plus depreciation, depletion, and amortization $ _____
*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) $ _____

| | YES | NO |
|---|---|---|
| 8. Is line 2 at least $10 million? | _____ | _____ |
| 9. Is line 2 at least 6 times line 1? | _____ | _____ |

*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11. _____ _____

11. Is line 7 at least 6 times line 1? _____ _____

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above) $ _____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth (if any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line) $ _____

*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) $ _____

YES NO

7. Is line 5 at least $10 million? _____ _____

8. Is line 5 at least 6 times line 1? _____ _____

9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10. _____ _____

10. Is line 6 at least 6 times line 1? _____ _____

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post-closure care.]

PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST-CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.3109.B.8.a.i are used.]

ALTERNATIVE I

1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

*4. Total liabilities (If any portion of your closure and/or post-closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.) $ _____

*5. Tangible net worth $ _____

*6. Net worth $ _____

*7. Current assets $ _____

*8. Current liabilities $ _____

*9. The sum of net income plus depreciation, depletion, and amortization $ _____

*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) $ _____

YES NO

11. Is line 5 at least $10 million? _____ _____

12. Is line 5 at least 6 times line 3? _____ _____

*13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14. _____ _____

14. Is line 10 at least 6 times line 3? _____ _____

[Fill in Alternative II if the criteria of LAC 33:IX.3109.B.8.a.ii are used.]

ALTERNATIVE II

1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

4. Current bond rating of most recent issuance of this firm and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (If any portion of the closure and/or post-closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.) $ _____

*8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) $ _____

YES NO

9. Is line 7 at least $10 million? _____ _____

10. Is line 7 at least 6 times line 3? _____ _____

*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. _____ _____

12. Is line 8 at least 6 times line 3? _____ _____

(The following is to be completed by all firms providing the financial test)

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.3109.B.8.d.

[Signature of chief financial officer for the firm]

[Typed name of chief financial officer]

[Title]

[Date]

**Document 10. Corporate Guarantee**

COMMERCIAL BLENDER, COMPOSTER, OR MIXER OF SEWAGE SLUDGE FACILITY CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.3109.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial blender, composter, or mixer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.3107.B.3, for the closure and/or post-closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.3109.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates as specified in LAC 33:IX.3109.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post-closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure, insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure"], or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.3107.B.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.3109.A" and/or "LAC 33:IX.3109.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.3109.B.8.i, effective on the date first above written.

Effective date:_____

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

_____

Notary Public

James H. Brent, Ph.D.
Assistant Secretary

0204#034

## RULE

## Office of the Governor
## Real Estate Commission

Advertising (LAC 46:LXVII.2501 and 2515)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Commission has amended LAC 46:LXVII.Chapter 25. The amendment establishes standard information to be included in all advertising by a real estate licensee and requires all trade names used by licensee, registrants, or certificate holders in advertising to be a clearly distinguished entity from that used by other licensees, registrants, or certificate holders.

### Title 46
### PROFESSIONAL AND OCCUPATIONAL STANDARDS
### Part LXVII. Real Estate

### Chapter 25. Advertising

### §2501. Advertisements

A. All advertising by any licensee shall include the phone number and the identity of the listing broker or firm through the use of the identical name under which the listing broker or firm is licensed or a registered trade name that is a clearly identifiable entity which will distinguish the listing broker or firm from other licensees, registrants, or certificate holders.

B. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002).

### §2515. Internet Advertising

A. - C.1 ...

2. the name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city, state and country in which the broker's main office is located;

C.4.- D.1. ...

2. the name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city, state and country in which the broker's main office is located;

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002).

Julius C. Willie
Executive Director

0204#039

## RULE

## Office of the Governor
## Real Estate Commission

Branch Office (LAC 46:LXVII.2301)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 23. The amendment requires all branch offices to be under the direct supervision of a sponsoring, qualifying, or affiliated broker and establish the duties and penalties associated therein.

### Title 46
### PROFESSIONAL AND OCCUPATIONAL STANDARDS
### Part LXVII. Real Estate

### Chapter 23. Branch Offices

### §2301. Branch Office

A. ...

B. Every branch office shall be under the direct supervision of a sponsoring, qualifying, or affiliated broker who shall be designated in writing as the branch office manager. A copy of the designation shall be submitted to the commission within five days following the date of the original designation or any changes thereto.

C. While supervising a branch office, a sponsoring, qualifying, or affiliated broker has all the duties of and is subject to the penalties applicable to a sponsoring broker. This does not relieve the sponsoring broker of the ultimate responsibility of the branch office operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002).

Julius C. Willie
Executive Director

0204#040

**RULE**

**Office of the Governor**
**Real Estate Commission**

Franchise Operations (LAC 46:LXVII.4501)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 45. The amendment requires all franchisors and franchisees to use a name or trade name that can be clearly distinguished from those used by other franchisors and franchisees.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Chapter 45. Franchise Operations**
**§4501. Registration of Franchise Name**

A. ...

B. Any name or trade name used by a franchisor or franchisee shall be a name or trade name that is a clearly identifiable entity that will distinguish itself from other franchisors or franchisees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002).

Julius C. Willie
Executive Director

0204#041

**RULE**

**Office of the Governor**
**Real Estate Commission**

Trade Names (LAC 46:LXVII.1903)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 19. The amendment requires all names or trade names used by licensees, registrants, or certificate holders in advertising and/or written or verbal communication to be a clearly distinguished entity from the names or trade names used by other licensees, registrants, or certificate holders.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Chapter 19. Names on Licenses, Registrations, and Certificates; Trade Names; Symbols; and Trademarks**
**§1903. Trade names**

A. ...

B. All names and/or trade names used by licensees, registrants or certificate holders in advertising and/or written or verbal communications of any kind shall be a name that is a clearly identifiable entity that will distinguish it from other licensees, registrants or certificate holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002).

Julius C. Willie
Executive Director

0204#042

**RULE**

**Department of Health and Hospitals**
**Board of Medical Examiners**

Temporary Permits for Athletic Trainers
(LAC 46:XLV.3162)

In accordance with R.S. 49:953, the Louisiana Medical Practice Act, R.S. 37:1261-1292, and particularly R.S. 37:1270(B), as well as the Athletic Trainers Law, R.S. 37:3301-3312, and particularly R.S. 3:3303.A(4), the Louisiana State Board of Medical Examiners has adopted administrative rules governing athletic trainers to provide for the issuance of temporary permits, under specified conditions, which allow an athletic trainer to work under the supervision and direction of a certified athletic trainer pending certification by the Board, LAC 46:XLV, Subpart 2, Chapter 31, Subchapter G, §3162. Such amendments would allow the board to issue a temporary permit to an applicant for certification as an athletic trainer, otherwise completely qualified for certification, who is scheduled to take or awaiting the results of the examination required for the issuance of certification, whose application is pending consideration by the board, to one under consideration for an H-1 or equivalent visa by the United States Immigration and Naturalization Service, or in such other instances as the board may deem proper.

The rule amendments are set forth below.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part XLV. Medical Professions**
**Subpart 2. Licensing and Certification**
**Chapter 31. Athletic Trainers**
**Subchapter G. Certificate Issuance, Termination, Renewal, Reinstatement**
**§3162. Restricted Certificates**

A. General. With respect to applicants who do not meet or possess all of the qualifications and requirements for certification required by this Chapter the board may, in its discretion, issue such temporary restricted certificates as are in its judgment necessary or appropriate to its responsibilities under law. Temporary restricted certificates shall be designated and known as permits.

B. Effect of Permit. A permit entitles the holder to engage in the practice of athletic training in the state of Louisiana only for the period of time specified by such

permit and creates no right or entitlement to certification or renewal of the permit after its expiration.

C. Types of Permits. The types of permits that the board may consider issuing are enumerated in the following paragraphs of this section. Other permits may be issued by the board upon such terms, conditions, limitations, or restrictions as to time, place, nature, and scope of practice as deemed, in its judgment, necessary or appropriate to the particular circumstances of individual applicants.

D. Limitations. Athletic trainers holding any permit issued under this Section may practice athletic training only under the supervision and direction of a certified athletic trainer who holds certification issued by the board, who shall provide such on-premises supervision and direction to the permit holder as is adequate to ensure the safety and welfare of athletes. Such supervision and direction shall be deemed to be satisfied by on-premises direction and supervision for not less than one hour each week.

E. Permit Pending Application for Visa. The board may issue a permit to practice athletic training to an applicant who is otherwise completely qualified for certification as an athletic trainer, save for possessing an H-1 or equivalent visa, provided that the applicant has completed all applicable requirements and procedures for issuance of certification or a permit and is eligible for an H-1 or equivalent visa under the rules and regulations promulgated by the United States Immigration and Naturalization Service (INS).

1. A permit issued under §3162.E shall expire and become null and void on the earlier of:

a. 90 days from the date of issuance of such permit;

b. 10 days following the date on which the applicant receives notice of INS action granting or denying the applicant's petition for an H-1 or equivalent visa; or

c. the date on which the board gives notice to the applicant of its final action granting or denying issuance of certification to practice athletic training.

2. The board may in its discretion extend or renew, for one or more additional 90-day periods, a permit that has expired pursuant to §3162.E.1.a in favor of an applicant who holds such a permit and who has filed a petition for an H-1 or equivalent visa with the INS, but whose pending petition has not yet been acted on by the INS within 90 days from issuance of such permit.

F. Permit Pending Examination/Results. The board may issue a permit to practice athletic training to an applicant who has taken the examination required by §3107.A.4 but whose scores have not yet been reported or to an applicant scheduled to take the examination at its next administration who has not previously failed such examination, to be effective pending the reporting of such scores to the board, provided that the applicant possesses and meets all of the qualifications and requirements for certification required under this Chapter, save for having taken, passed, or received the results of the examination specified in §3107.A.4.

1. A permit issued under §3162.F shall expire, and thereby become null, void and to no effect on the earlier of any date that:

a. the board gives written notice to the permit holder that he has failed to achieve a passing score on the certification examination;

b. the board gives written notice to the permit holder pursuant to §3143.C that it has probable cause to believe that he has engaged or attempted to engage in conduct which subverted or undermined the integrity of the examination process;

c. the permit holder is issued a certificate to practice athletic training pursuant to §3153 of this Chapter; or

d. the holder of a permit issued under §3162.F fails to appear for and take the certification examination for which he has registered.

2. The board may, in its discretion, extend or renew a permit which has expired pursuant to §3162.F.1 in favor of an applicant who makes written request to the board and evidences to its satisfaction a life-threatening or other significant medical condition, financial hardship or other extenuating circumstance.

G. Permit Pending Application. The board may issue a permit to practice athletic training, effective for a period of 60 days, to an applicant who has made application to the board for certification as an athletic trainer, who provides satisfactory evidence of having successfully completed the examination required by §3107.A.4 and who is not otherwise demonstrably ineligible for certification under R.S. 37:3307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, R.S. 37:1270, R.S. 37:3301-3312 and R.S. 37:3303.A(4).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 28:830 (April 2002).

John B. Bobear, M.D.
Interim Executive Director

0204#018

**RULE**

**Department of Health and Hospitals**
**Office of Addictive Disorders**

OAD Resource Allocation Formula

The purpose for a statewide resource allocation formula is to provide a rational, objective, and fair basis to use in evaluating equitable access to services by persons in all areas of the state. The intent is to use the formula as a management tool to increase service availability to residents living in regions with the least access. Given the limited availability of services in Louisiana, no region is over-served, thus it is important to bring up the under-served regions without reducing the limited service infrastructure anywhere else in the state.

A Resource Allocation Task Force representing all regions of the state was convened in Baton Rouge in August, 1999 to discuss options and to develop a consensus list of formula elements. From a long list of potential data elements, approximately 40 separate recommendations were made by task force members. Taking the areas of strongest consensus, the recommendations were analyzed and grouped, representative measures were chosen for each group, and weights were chosen to represent the relative importance of each element. The results comprise the elements and weights of the formula as follows.

**Formula Elements**

Poverty—20 Percent. Poverty was the element with the most support, with all 10 regions recommending inclusion. This is measured as the number of persons residing in the region who have incomes below the poverty level as defined by the U.S. Census. Poverty is a barrier to service access and is also a risk factor associated with substance abuse problems.

Population—20 Percent. The total population of persons from 15 to 34 years of age living in the region. The effect of this measure will be to give emphasis on the population density and the number of people in the age range of most potential service recipients.

Treatment Need—20 Percent. This is the estimated number of adults needing alcohol or drug treatment in each region. These estimates were developed by researchers at the Research Triangle Institute under contract with the state. This element is important because it is a direct measure of alcohol and drug services need.

Arrests—15 Percent. Arrest recommendations had more variation than other domains. Recommendations varied as to juvenile versus adult, alcohol versus drug, property and violence versus alcohol and drug offenses. Arrests are thought to reflect a dimension of equity that is not well reflected in other elements. The chosen element is the total number of adult and juvenile arrests for alcohol and drug offenses.

Rurality—15 Percent. This element is closely related to transportation deficits, which were articulated as particular problems for rural areas. The actual measure is the number of persons living in rural places. This is defined by the U.S. Census as places with less than 2,500 residents.

Teenage Mothers—10 Percent. From birth certificate data provided by the Vital Records Registry has been obtained the number of persons below 20 years of age who gave birth. These young families have multiple risk factors and service access barriers.

The following data for the formula are obtained from state and federal government agencies, and from a documented research study of the Research Triangle Institute (Round 1 State Treatment Needs Assessment Studies). The most available data available is used at the time the formula is compiled; the data will be updated only when the entire formula is reconsidered on an annual or biennial basis. It is understood that each type of data used in the formula has limitations and weaknesses. Some of the elements are more recent than others, some may not be faithfully reported in all regions by the various agency reporting systems, one is based on a survey, which has limitations, and some are indirect indicators instead of direct measures. The use of multiple elements mitigates the influence of any one element and the use of public data makes this an objective and rational system that treats all regions fairly.

**Formula Tables**

| Regional Data | | | | | | |
|---|---|---|---|---|---|---|
| **Region** | **Poverty** | **Population Age15-34** | **Alcohol & Drug Treatment Need** | **Alcohol & Drug Arrests** | **Rurality** | **Teenage Parents** |
| 1 | 167,521 | 192,257 | 52,223 | 8,984 | 7,609 | 1,943 |
| 2 | 108,353 | 190,521 | 36,626 | 7,194 | 161,060 | 1,319 |
| 3 | 83,028 | 120,700 | 22,574 | 4,026 | 123,889 | 1,006 |
| 4 | 131,733 | 159,291 | 39,741 | 4,882 | 230,395 | 1,551 |
| 5 | 51,416 | 80,167 | 22,036 | 4,469 | 93,337 | 771 |
| 6 | 73,896 | 103,731 | 24,074 | 4,122 | 167,011 | 959 |
| 7 | 120,692 | 151,082 | 34,286 | 7,276 | 179,874 | 1,419 |
| 8 | 95,346 | 111,622 | 22,134 | 3,786 | 161,800 | 1,150 |
| 9 | 72,190 | 107,999 | 36,287 | 5,341 | 216,287 | 1,067 |
| 10 | 62,827 | 145,880 | 43,810 | 4,759 | 6,673 | 1,013 |
| Total | 967,002 | 1,363,250 | 333,791 | 54,839 | 1,347,935 | 12,198 |

The final step in constructing the formula is to convert the data into percentages and to adjust each percentage according to the weight for that element. The resulting formula table as shown below indicates in the far right column the percent of total state service resources that should be available to the residents of each region.

| FY 2001 Resource Allocation Formula | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Weights** | **20%** | **20%** | **20%** | **15%** | **15%** | **10%** | ****** |
| **Region** | **Poverty** | **Population Age 15-34** | **Alcohol & Drug Treatment Need** | **Alcohol & Drug Arrests** | **Rurality** | **Teenage Parents** | **Regional Formula Allocation** |
| 1 | 17.3% | 14.1% | 15.6% | 16.4% | 0.6% | 15.9% | **13.5%** |
| 2 | 11.2% | 14.0% | 11.0% | 13.1% | 11.9% | 10.8% | **12.1%** |
| 3 | 8.6% | 8.9% | 6.8% | 7.3% | 9.2% | 8.2% | **8.1%** |
| 4 | 13.6% | 11.7% | 11.9% | 8.9% | 17.1% | 12.7% | **12.6%** |
| 5 | 5.3% | 5.9% | 6.6% | 8.1% | 6.9% | 6.3% | **6.5%** |
| 6 | 7.6% | 7.6% | 7.2% | 7.5% | 12.4% | 7.9% | **8.3%** |
| 7 | 12.5% | 11.1% | 10.3% | 13.3% | 13.3% | 11.6% | **11.9%** |
| 8 | 9.9% | 8.2% | 6.6% | 6.9% | 12.0% | 9.4% | **8.7%** |
| 9 | 7.5% | 7.9% | 10.9% | 9.7% | 16.0% | 8.7% | **10.0%** |
| 10 | 6.5% | 10.7% | 13.1% | 8.7% | 0.5% | 8.3% | **8.3%** |
| Total | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | **100.00%** |

**Formula Applications**

The formula provides a measurement tool to assist in working toward equitable access to services in the state. Application of this method requires policy decisions concerning various categories of program funding. For the coming year the following policy decisions are in effect and they will be reconsidered periodically.

Hold Harmless. Funding will not be reduced for any region in order to shift funds to under-served regions. The reason for this policy is to protect the state's investment in programs that have been built up over time. Also, it is recognized that many programs provide services to clients who are residents of other regions.

Dollars Follow Clients. Costs will be tracked to the region of residence of clients and this will be the primary comparison made to determine equitable access to services. This is a distinctly different method than tracking expenditures by service location.

Drug Courts and Cross-Regional Programs. The "Dollars Follow Clients" policy applies to all regional programs included under formula funding and specifically includes Drug Courts and programs that are cross-regional in nature.

Categoricals and Statewides. The "Dollars Follow Clients" policy does not apply to categorical federal grant funded programs or other programs that are statewide in nature. Funding for both of these types of programs is not included in formula funding comparisons.

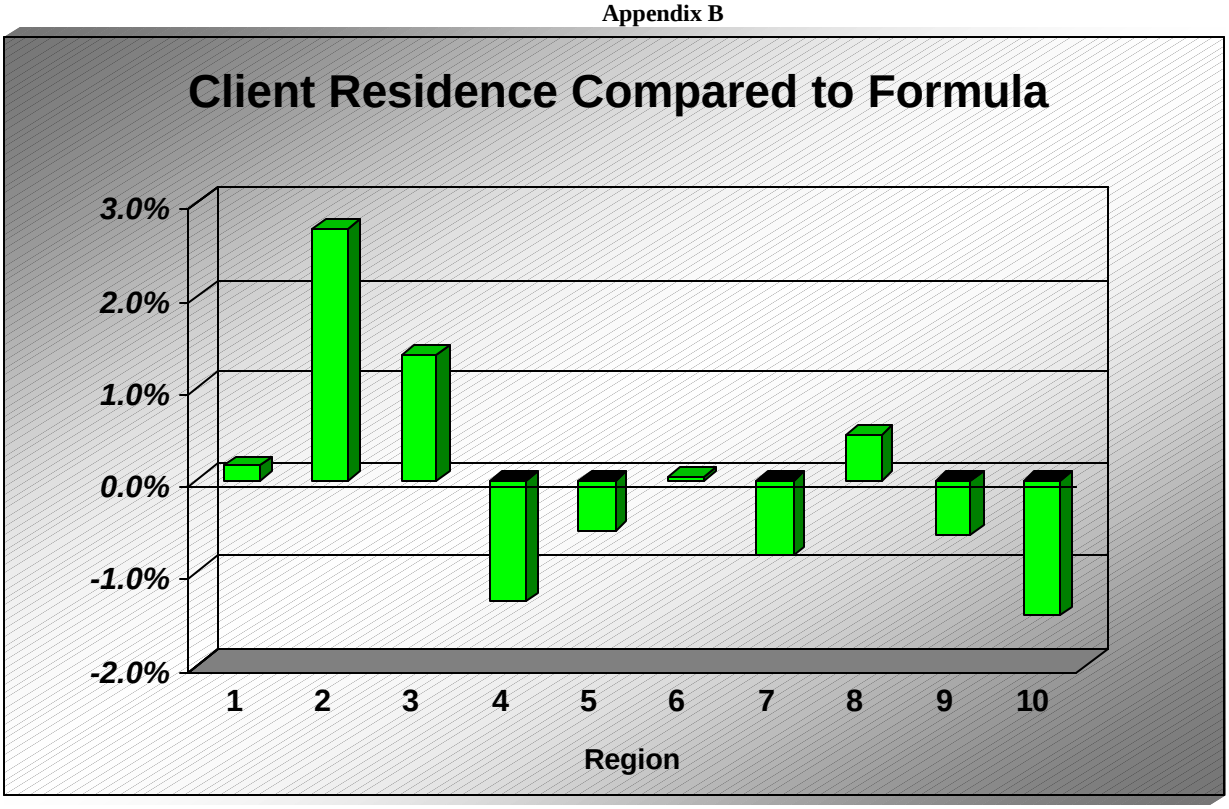
Expand Toward Equity. The primary use of the formula will be to identify under-served regions of the state and to target them with new or underutilized funds. During budget cycles in which there is a reduction in overall state funding available, the "hold harmless" policy means that the "dollars follow clients" policy will not be followed. Instead, the location of service expenditures will be the primary comparison method to plan for resource allocation.

**Appendix A**
**Formula Comparisons Using Current Budget Expenditures and Residents Utilization**

| Region | Current Budget Expenditures | Adjusted Budget Based on Client Residence | Formula | Over/(Under) Formula (Res) |
|---|---|---|---|---|
| 1 | $5,259,422 | $5,562,819 | $5,500,480 | $62,339 |
| 2 | $4,914,477 | $6,032,089 | $4,930,060 | $1,102,029 |
| 3 | $3,913,825 | $3,885,346 | $3,300,288 | $585,058 |
| 4 | $3,265,333 | $4,592,650 | $5,133,781 | ($541,131) |
| 5 | $2,265,151 | $2,390,732 | $2,648,379 | ($257,647) |
| 6 | $5,299,292 | $3,396,466 | $3,381,776 | $14,690 |
| 7 | $5,241,339 | $4,539,443 | $4,848,571 | ($309,128) |
| 8 | $3,071,759 | $3,734,957 | $3,544,754 | $190,203 |
| 9 | $5,119,743 | $3,826,785 | $4,074,429 | ($247,644) |
| 10 | $2,393,953 | $2,783,007 | $3,381,776 | ($598,769) |
| Total | $40,744,294 | $40,744,294 | $40,744,294 | ($0) |

| Region | Current % of Budget Expenditures | % Based on Client Residence | % Per Formula | Over/(Under) Formula(Res) |
|---|---|---|---|---|
| 1 | 12.9% | 13.7% | 13.5% | 0.2% |
| 2 | 12.1% | 14.8% | 12.1% | 2.7% |
| 3 | 9.6% | 9.5% | 8.1% | 1.4% |
| 4 | 8.0% | 11.3% | 12.6% | -1.3% |
| 5 | 5.6% | 5.9% | 6.5% | -0.6% |
| 6 | 13.0% | 8.3% | 8.3% | 0.0% |
| 7 | 12.9% | 11.1% | 11.9% | -0.8% |
| 8 | 7.5% | 9.2% | 8.7% | 0.5% |
| 9 | 12.6% | 9.4% | 10.0% | -0.6% |
| 10 | 5.9% | 6.8% | 8.3% | -1.5% |
| Total | 100.0% | 100.0% | 100.0% | 0.0% |

**Appendix B**




David W. Hood
Secretary

0204#054

**RULE**

**Department of Health and Hospitals**
**Office of the Secretary**

Organ Procurement Agency Coordination

The Department of Health and Hospitals, Office of the Secretary, has adopted the following rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Anatomical Gift Act, R.S. 17:2354.4(J), and 42 CFR Part 482.45. This Rule is being submitted to fulfill the secretary's responsibility to establish rules to implement appropriate procedures to facilitate proper coordination among hospitals, the Louisiana-designated organ procurement organization, and tissue and eye banks.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this Rule on the family has been considered. This Rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

**Rule**

**Definitions**

*Tissue Bank or Storage Facility***C**a nonprofit facility licensed or approved under the laws of any state for storage of human bodies or parts thereof for use in transplantation to individuals, medical education, research, or therapy.

*Department***C**the Department of Health and Hospitals.

*Hospital***C**a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the U.S. government, a state, or subdivision thereof, although not required to be licensed under state laws.

*Organ Procurement Organization (OPO)***C**an organization that is designated by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), formerly Health Care Financing Administration, or its successor, to perform or coordinate the performance of surgical recovery, preservation, and transportation of organs, and that maintains a system for locating perspective recipients for available organ transplantation.

*Louisiana/Designated Organ Procurement Organization***C**the organ procurement organization designated by CMS and recognized by the secretary of the Department of Health and Hospitals of Louisiana under R.S.17:2354.4(J).

*A Designated Requestor***C**an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ and tissue donation.

**Conditions for Participation**

In order to insure that the family of each potential donor is informed of its options to donate organs, tissues, or eyes or to decline to donate, the department adopts the procedures specified in the federally approved Medicare Conditions for Participation for Hospitals (42 CFR Part 482.45) to be followed by all hospitals in Louisiana. The individual designated by the hospital to initiate the request to the family must be an organ procurement representative or a designated requestor.

The Department of Health and Hospitals shall recognize the federally designated organ procurement organization. A letter by the CMS shall be presented to the secretary of the Department of Health and Hospitals upon certification of the

organ procurement organization. Any changes between certification periods shall be reported to the secretary within 30 working days.

The secretary shall compile and disseminate a list of those nonprofit organ and tissue banks that, in addition to the Louisiana designated OPO, shall be authorized to receive donations under this section. The organ procurement organization shall be authorized upon designation by the Health Care Finance Administration. The nonprofit tissue bank or eye bank must submit copies of the following to the Secretary for authorization:

1. Proof that a nonprofit tissue bank or eye bank registered in this state or any state as a 501-C-3 charitable organization with no direct ties to any for-profit tissue processor unless an approved nonprofit vehicle is unavailable.

2. A copy of the current accreditation letter by the American Association of Tissue Banking for those nonprofit tissue banks, and a current accreditation letter by the Eye Banks of America Association for the nonprofit eye banks.

Under the Medicare Conditions for Participation for Hospitals, the following procedures are to be implemented to facilitate proper coordination among hospitals, Louisiana designated OPO, and tissue and eye banks:

1. All hospitals will incorporate an agreement with the Louisiana designated OPO, under which it must notify in a timely manner, the OPO of individuals whose death is imminent or who have died in the hospital.

2. The OPO will determine medical suitability for organ donation under this agreement.

3. The hospital will incorporate an agreement with at least one nonprofit tissue bank and at least one non-profit eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as may be appropriate to assure that all useful tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement.

4. The Louisiana designated OPO will refer all appropriate referrals to the appropriate nonprofit tissue or eye bank which the OPO and hospital have incorporated an agreement with for those purposes.

David W. Hood
Secretary

0204#055

**RULE**

**Department of Health and Hospitals**
**Office of the Secretary**
**Bureau of Community Supports and Services**

Home and Community Based Services Waiver Program
Adult Day Health Care Waiver
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services has adopted the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented the Adult Day Health Care Waiver Program effective January 6, 1985. The Adult Day Health Care Waiver was designed to meet the individual needs of aged and functionally impaired adults by providing a variety of health, social and related support services in a protective setting. Candidates who meet all of the eligibility criteria are ranked in the order of the date on record when the candidate initially requested to be evaluated for waiver eligibility and placed on waiting lists maintained by the participating Adult Day Health Care centers. In order to facilitate the efficient management of the waiver waiting list, the department adopted an Emergency Rule to transfer responsibility for the Adult Day Health Care Waiver waiting lists to the Bureau of Community Supports and Services and establish a single state-wide request for services registry *(Louisiana Register*, Volume 27, Number 12). The department now proposes to adopt a Rule to continue the provisions contained in the December 3, 2001 Emergency Rule.

**Rule**

The Department of Health and Hospitals transfers responsibility for the waiting list for the Adult Day Health Care (ADHC) Waiver to the Bureau of Community Supports and Services (BCSS) and consolidates the approximately twenty-seven waiting lists into a centralized state-wide request for services registry that is maintained by region and arranged in order of the date of the initial request. Persons who wish to be added to the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested waiver services. When a candidate is listed on more than one waiting list, the earliest date on record shall be considered the date of initial request.

David W. Hood
Secretary

0204#061

**RULE**

**Department of Health and Hospitals**
**Office of the Secretary**
**Bureau of Community Supports and Services**

Home and Community Based Services Waiver Program
Elderly and Disabled Adult Waiver
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services has adopted the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals amends the January 1998 Rule to incorporate the transfer of

responsibility for the waiting list for the Elderly and Disabled Adult waiver to the Bureau of Community Supports and Services (BCSS) and consolidate the 64 waiting lists into a centralized state-wide request for services registry arranged in order of the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of the date on record when the candidate initially requested to be evaluated for waiver services.

David W. Hood
Secretary

0204#062

**RULE**

**Department of Health and Hospitals**
**Office of the Secretary**
**Bureau of Community Supports and Services**

Home and Community Based Services Waiver Program—Personal Care Attendant Waiver
Request for Services Registry

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals transfers responsibility for the Personal Care Attendant (PCA) waiver waiting list to the Bureau of Community Supports and Services (BCSS) and consolidates the three waiting lists into a state-wide request for services registry arranged by degree of need and the date of the initial request. Persons who wish to be placed on the request for services registry shall contact a toll-free telephone number maintained by BCSS. Those persons on the existing waiting lists prior to the date of the transfer of responsibility to BCSS shall remain on the request for services registry in the order of degree of need score and the date on record when the candidate initially requested waiver services.

David W. Hood
Secretary

0204#065

**RULE**

**Department of Health and Hospitals**
**Office of the Secretary**
**Bureau of Health Services Financing**

Medicaid Eligibility—Breast and Cervical Cancer Treatment Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes an optional eligibility group to provide medicaid eligibility to women who are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

**Eligibility Criteria**

Regular income and resource criteria are not applicable for Medicaid benefits under this optional eligibility group. However, the applicant's income must be under 250 percent of the federal poverty level in order to qualify for screening under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program.

Women must meet all of the following criteria in order to be considered for the optional eligibility group:

1. the woman must have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program and found to need treatment for either breast or cervical cancer, including pre-cancerous conditions and early stage cancer; and
2. she must be uninsured (or if insured, has coverage that does not include treatment of breast or cervical cancer) and ineligible under any of the mandatory medicaid eligibility groups; and
3. she must be under age 65.

**Coverage**

A woman who becomes eligible under this new optional category is entitled to full Medicaid coverage. Coverage is not limited to treatment of breast and cervical cancer.

Implementation of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood
Secretary

0204#063

**RULE**

**Department of Health and Hospitals**
**Office of the Secretary**
**Bureau of Health Services Financing**

Pharmacy Program Average Wholesale Price Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in April 1990 to amend the reimbursement methodology for drugs under the Louisiana Medicaid Pharmacy Program (*Louisiana Register*, Volume 16, Number 4). In compliance with Act 10 of the 1999 Regular Session of the Louisiana Legislature, the bureau amended the April 20, 1990 rule to limit payments for prescription drugs to the lower of: (1) average wholesale price (AWP) minus 10.5 percent for independent pharmacies and 13.5 percent for chain pharmacies; (2) Louisiana=s maximum allowable cost (MAC) limitation plus the maximum allowable overhead cost (MAOC); (3) federal upper limits plus the maximum allowable overhead cost; or (4) provider=s usual and customary charges to the general public. In addition, the definition of chain pharmacies was established as five or more medicaid enrolled pharmacies under common ownership (*Louisiana Register*, Volume 26, Number 6).

As a result of a budgetary shortfall, the bureau adopted a rule amending the June 20, 2000 rule to limit payments for prescription drugs to the lower of (AWP) minus 15 percent for independent pharmacies and 16.5 percent for chain pharmacies. In addition, the definition of chain pharmacies was changed from five or more to more than 15 medicaid enrolled pharmacies under common ownership (*Louisiana Register*, Volume 26, Number 8). As a result of the allocation of funds by the Legislature during the 2001 Regular Session, the bureau increased the reimbursement rate for prescription drugs under the Medicaid Program by amending the estimated acquisition cost formula from AWP minus 15 percent to AWP minus 13.5 percent for independent pharmacies and from AWP minus 16.5 percent to AWP minus 15 percent for chain pharmacies (*Louisiana Register*, Volume 27, Number 8). The bureau now proposes to adopt a rule to continue the provisions contained in the August 6, 2001 emergency rule.

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for prescription drugs under the Medicaid Program by amending the estimated acquisition cost formula from average wholesale price (AWP) minus 15 percent to AWP minus 13.5 percent for independent pharmacies and from AWP minus 16.5 percent to AWP minus 15 percent for chain pharmacies. This adjustment applies to single source drugs, multiple source drugs that do not have a state maximum allowable cost (MAC) or federal upper limit and those prescriptions subject to MAC overrides based on the physician=s certification that a brand name product is medically necessary.

Implementation of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood
Secretary

0204#064

**RULE**

**Department of Health and Hospitals**
**Office of Public Health**

Identification of Hearing Impairment in Infants
(LAC 48:V.Chapter 22)

In accordance with the applicable provision of the Administrative Procedure Act, R.S. 49:950 et seq., and the Identification of Hearing Impairment in Infants, R.S. 46:2261 et seq., the Department of Health and Hospitals, Office of Public Health has revised procedures for the screening of infants to identify hearing impairment, testing of all newborns and referral of newborns failing screening for appropriate follow-up services and to ensure proper information distribution to parents, primary care physicians and interested groups.

Louisiana's Act 417 of 1992 mandated hearing screenings of all high-risk infants and rules and regulations were adopted to implement the program in accordance with the Administrative Procedure Act. On July 1, 1999, Act 417 was amended by Act 653 of the 1999 Regular Legislative Session to require universal hearing screening of all newborn infants, rather than screening of only those infants with high-risk factors.

It is necessary that new Rules be adopted to allow for the proper statewide implementation of universal newborn hearing screening as required by the amended legislative provisions as included in Act 653 of the 1999 Regular Legislative Session.

**Title 48**
**PUBLIC HEALTHC GENERAL**
**Part V. Preventive Health Services**
**Subpart 7. Maternal and Child Health Services**
**Chapter 22. Identification of Hearing Impairment in Infants**

**§2201. Definitions**

* * *

*Program*the Hearing, Speech and Vision Program within the office.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1430 (November 1993), amended LR 28:837 (April 2002).

**§2203. Program for Identification of Hearing Loss in Infants**

A. The program will include the following.

1. The office will require a newborn hearing screening report to be used by the hospitals to report hearing screening results and risk status on all newborns to the risk registry. This form will include written material regarding hearing loss and a toll-free hotline phone number (V/TDD).

2. - 6. ...

B. Implementation

1. All birthing sites in Louisiana must be in compliance with this act by April 1, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2205. Procedures for Hospitals**

A. Hospitals shall complete the newborn screening report on all live births.

B. Hospitals shall conduct hearing screening on all newborn infants before discharge.

C. - D. ...

E. If an infant is born in one hospital and transferred to one or more hospital(s), the last hospital to which the infant is transferred before being discharged into the care of a parent, or guardian for purposes other than transport, must complete the newborn infant hearing report and perform the hearing screening.

F. If an infant is to be placed for adoption and is to be transferred to another hospital for adoption, the hospital at which the infant is born is to complete the newborn hearing screening report and perform the hearing screening (unless §2205.E above applies). The parent copy of the newborn hearing screening report shall be sent to the guardian.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2207. Procedures for Other (Alternative) Birthing Sites**

A. ...

B. Hearing screening shall be performed at the alternative birthing site before discharge. The results of the screening shall be recorded on the newborn hearing screening report.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2209. Hearing Screening Procedures**

A. Personnel. Hearing screening will only be performed by:

1. board eligible or board certified physicians with special training in auditory brainstem response testing and/or otoacoustic emissions and in infant hearing testing. Evidence of training must be submitted to the office;

2. audiologists licensed by the Louisiana Board of Examiners for Speech Pathology and Audiology with special training in auditory brainstem response testing and/or otoacoustic emissions testing and in infant hearing testing. Evidence of training must be submitted to the office;

3. ...

B. Test Procedures. The following test procedures are the only acceptable methods for use in infant hearing screening:

1. Auditory Brainstem Response (ABR) either automated or non-automated;

2. Evoked Otoacoustic Emission (EOAE);

3. test levels, failure criteria and all other test parameters are set by protocols established by the office, upon recommendations of the State Advisory Council.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1431 (November 1993), amended LR 28:838 (April 2002).

**§2210. Referral and Follow-Up**

A. Referrals for infants failing screening must be made to the infants primary care physician and a licensed audiologist within seven days of discharge by the birthing center.

B. Appropriate protocols and standards for diagnostic evaluations to determine hearing loss shall be established by the office, upon recommendations of the State Advisory Council.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:838 (April 2002).

**§2213. Risk Registry and Tracking**

A. - C. ...

D. The office will develop a system for reporting diagnosis of hearing loss by primary health care providers, audiologists and parents for children up to age 5.

E. - F. ...

G. Non-Compliance And Penalties

1. The State Advisory Council shall recommend to the office methods of monitoring hospitals, physicians and audiologists for compliance with all sections of this statute.

2. The State Advisory Council shall report any hospital, physician or audiologist found to be non-compliant to the appropriate licensing, regulatory or other appropriate agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2261-2267.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 19:1432 (November 1993), amended LR 28:838 (April 2002).

David W. Hood
Secretary

0204#052

**RULE**

**Department of Health and Hospitals**
**Office of Public Health**
**Center for Environmental Health**

Sanitary Code Chapter XII—Water Supplies
(LAC 48:V.Chapter 73)

Editor's Note: This Rule is being repromulgated in its entirety to correct printing errors. The original rule may be viewed on pages 502-508 of the March 20, 2002 edition of the *Louisiana Register*. Please note the effective date of this rule.

In accordance with the Louisiana Administrative Procedures Act, R.S. 49:950, et seq., The Department of Health and Hospitals, Office of Public Health, Center for Environmental Health, pursuant to the authority in R.S. 40:4, and authorized by R.S. 40:1148, herewith repeals the Rule entitled Water Treatment Plant Operator Certification consisting of the Louisiana Administrative Code, Title 48, Part V, sections 7301 through 7335, and adopts the following rule consisting of LAC, Title 48, Part V, Sections 7301 through 7339.

Also, under the authority of R. S. 40:4 and in accordance with R. S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Office of Public Health herewith amends Chapter XII (Water Supplies) of the Louisiana State Sanitary Code.

The following rules shall be effective April 1, 2002

**Title 48**
**PUBLIC HEALTH-GENERAL**
**Part V. Preventive Health Services**
**Subpart 21. Water and Wastewater Operator Certification**

**Chapter 73. Certification**

**§7301. Definitions**

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

*Committee of Certification*—as defined in statue R.S. 40:1142.

*Community Sewerage System*—any sewerage system which serves multiple connections and consists of a collection and/or pumping/transport system and treatment facility.

*Department*—the Louisiana Department of Health and Hospitals, Office of Public Health.

*Person*—an individual, a public or private corporation, an association, a partnership, a public body created by or pursuant to state law, the state of Louisiana, an agency or political subdivision of the state, a federally recognized Indian tribe, the United States government, a political subdivision of the United States government, and any officer, employee, or agent of one of those entities.

*Operator*—the individual, as determined by the Committee of Certification, in attendance on site of a water supply system or sewerage system and whose performance, judgment, and direction affects either the safety, sanitary quality, or quantity of water or sewage treated or delivered.

*Public Water System*—a system for the provision to the public of water for potable purposes through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002)..

**§7303. Certification Requirements**

A. The basic requirements for certification are set forth in R.S. 40:1141-1151.

B. The Operator of any public water system or any community sewerage system shall hold current and valid professional certification(s) of the required category(s) at or above the level required for the total system and individual facility. Additionally, an operator shall demonstrate that, when not actually on site at the facility, he is capable of responding to that location within one hour of being notified that his presence is needed.

C. Systems operating multiple shifts are required to have a minimum of one certified operator present on each shift. Exact numbers of certified operators required may be determined by the committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:502 (March 2002), repromulgated LR 28:839 (April 2002).

**§7305. Categories of Certification**

A. Certifications are offered in each of the following areas (categories), of qualification:

1. water production;
2. water distribution;
3. water treatment;
4. wastewater collection;
5. wastewater treatment.

B. Water production certifications are required on all facilities. For those systems which use groundwater as a source of raw water and which do not alter the physical, chemical or bacteriological quality of the water other than simple disinfection, operators will not be required to hold certificates for treatment in addition to production.

C. Water distribution certifications are required on all portions of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.

D. Water treatment certifications are required for all operators of facilities which use surface water as a source of raw water, as well as those groundwater systems that involve complex treatment and/or which in some way alters the physical, chemical or bacteriological quality of the water. Water Treatment certification shall not be required for groundwater systems for which the only type of treatment employed is simple disinfection, and where the well(s) has been determined to be not under the direct influence of surface water.

E. Wastewater treatment certifications are required on all facilities which provide for the treatment of wastewater and the reduction and/or handling of sludge removed from such wastewater.

F. Wastewater collection certifications are required on all components of a sewerage system except for the sewage treatment plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:503 (March 2002), repromulgated LR 28:839 (April 2002).

### §7307. Levels (Classes) of Certification for Types of Facilities

A. Required levels of certification for an operator, based on facility classification, are as follows:

| Population Served | Facility Classification |
|---|---|
| <1,000 | Class 1 |
| 1,001-5,000 | Class 2 |
| 5,001-25,000 | Class 3 |
| Over 25,000 | Class 4 |

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:840 (March 2002).

### §7309. Operator Qualifications C General (Education/Experience)

A. Whereas R.S. 40:1141-1151 specifies minimum operator qualifications in years, these values have been converted to "points" for ease of integration with continuing education credits and substitutions between education and experience. Operator qualifications for the various levels of certification shall be determined by minimum point values as follows:

| Certification Level | Required Points |
|---|---|
| Op-In-Training | 0 |
| Class 1 | 1 |
| Class 2 | 2 |
| Class 3 | 5 |
| Class 4 | 8 |

NOTE: A minimum educational requirement of a High School Diploma (or G.E.D.) is applied to ALL levels of certification. Required point values for education and experience are in addition to this minimum level of education. Point value required for Classes 1 and 2 may be from experience alone although 25 percent of this value may be acquired from education credit. No more than 75 percent of the total required points for Classes 3 or 4 may be obtained from education or experience alone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

### §7311. Operator Qualifications C Substitutions/ Assignment of Point Values

A. Point values for education, continuing education, and experience are assigned as follows.

1. Education

a. Each year of formal college education (minimum of 30 semester hours) = 1 point

b. Each year of formal graduate level education = 1.5 points

c. Each semester hour (credit) for college-level courses = 0.033 point

d. Each 40-hour qualified, approved training course = 0.10 point

e. Each 8 hours of qualifying, approved continuing education = 0.02 point

f. Each 1 hour of qualifying, approved continuing education = 0.0025 point

2. Experience

a. Each year of qualifying operator experience = 1 point

b. Each year of qualifying related experience = 0.5 point

c. Each year of qualifying supervisory experience = 1.5 points

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

### §7313. Professional Certification

A. All persons seeking professional certification must be employed or seeking employment by a water or wastewater utility.

B. Certificates must be displayed by the holder in a prominent place in the classified facility. Additionally, at such time as a certified operator is issued a certified operator identification card, the operator shall carry his identification card on their person while on duty in the classified facility. Failure to do so may be considered grounds for revocation of the certificate in accordance with R.S. 40:1145(D).

C. Certificates shall be valid only so long as the holder uses reasonable care, judgment, and knowledge in the performance of his/her duties. No certificate will be valid if obtained or renewed through fraud, deceit, or the submission of inaccurate qualification data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

### §7315. Limited Certificates

A. Only those limited certificates issued prior to the effective date of these Rules, in compliance with R.S. 40:1141-1152 remain valid, and shall remain valid only for the system in which the operator was previously employed and for the conditions of operations and duties involved on the original effective date of this Rule.

B. Limited certificates shall be renewable upon application provided the requirements for renewal without reexamination for certificates of even grade are satisfied.

C. Persons granted limited certificates and renewals of limited certificates shall pay the same fees as are fixed for mandatory certificates of like grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

### §7317. Operator-in-Training

A. Operator-in-Training certificates may be granted to newly hired personnel, who have not previously been certified, or who have not held any type of certification for in excess of two years, and who do not presently qualify for a professional or provisional certificate. Such individuals may make application for the appropriate category (water, wastewater) of operator-in-training certificate. The

certification officer will then begin maintaining records of all approved education, training and experience credits accumulated by the operator-in-training. An operator-in-training certificate shall be valid for a period of 24 months from the date of issue, and may be renewed in the same manner as provisional or professional certificates. Operators-in-training may not be designated as the operator of the system/facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:840 (April 2002).

**§7319. Provisional Certificate**

A. A provisional certificate may be issued to any applicant who successfully passes an examination. Provisional certificates shall not qualify an individual to serve as the operator of a facility.

B. A provisional certificate may be converted to a professional certificate if the certificate holder meets all qualifications and assumes the duties of an active operator of a water or wastewater system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:504 (March 2002), repromulgated LR 28:841 (April 2002).

**§7321. Examinations C General**

A. All operators wishing to become certified by the State of Louisiana, must pass an examination demonstrating they have the necessary knowledge, skills, judgement, and abilities as specified by the committee of certification. All exam questions will be validated by the committee of certification or their appointees.

B. Exams shall be conducted in the English language.

C. The committee of certification has established open examination periods for water and/or wastewater operators to be examined. They are as follows.

1. One annual open exam shall be conducted at the conclusion of the annual Louisiana Conference on Water Supply, Sewerage and Industrial Waste "Short Course," meeting which is held in various locations around the state.

2. One open exam shall be conducted at the conclusion of the Louisiana Rural Water Association Annual Conference.

3. Other open examinations may be scheduled at other locations as determined by the committee of certification based on their determination of need subject to provisions of §7305 of these Rules.

4. Application for examinations to be given following scheduled training courses, seminars, workshops, etc., (as listed in §7329 and §7331 of these Rules) will be considered on a case-by-case basis by the committee of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002).

**§7323. Examinations C Individual Operator Requirements**

A. Individual operators must make written application to the committee of certification to take each examination or series of examinations. The application forms will be made available to the examinee prior to the exam period with ample time given to allow completion prior to the actual exam period. The operator (examinee) carries the responsibility for the accuracy of the information contained in the application.

B. Applicants for certification examinations must pay the prescribed exam fee at the conclusion of testing (see §7333 of these Rules).

C. All examinations shall be administered in the English language. Requests for examinations to be administered orally may be considered by the administrator, upon written request by an applicant, submitted at least 30 days in advance, with verifiable proof from a physician that the applicant has a medical condition temporarily preventing him from taking the examination in the conventional manner.

D. Exams shall be taken and passed in sequence from the Class 1 to the Class 4 in each category.

E. Applicants may not apply to take and may not take examinations for certification higher than one level above that for which they are currently qualified.

F. If an applicant takes an examination and fails to attain a passing grade (70 percent or higher), he must wait a minimum of 90 days before he can take another exam in the same category and level. After three failed attempts at the same examination, an applicant will be required to attend a 40-hour training course before retesting will be allowed.

G. All examinations will be graded by department personnel and retained for two years. The examinee will be notified of the results. Examinations will not be returned to the examinee, but may, upon written request, be reviewed in the Operator Certification Program Office in Baton Rouge within 30 days following receipt of the notification of results.

H. Individuals caught cheating during the operator certification examinations or found to have prejudiced these exams or applications in any way shall be entitled to an administrative hearing before the committee of certification. If the committee finds that valid grounds exist, it shall revoke the subject's current certificate, it may refuse to certify the applicant and it may reject future applications. As provided in the Administrative Procedure Act, an aggrieved party may seek judicial review of the committee of certification's action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002).

**§7325. Application for Certification**

A. All applications for certificates shall be addressed to: Administrator, Operator Certification Program, Louisiana Department of Health and Hospitals, Office of Public Health, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810. Applications for certificates must be accompanied by the prescribed fees.

B. All initial applications for any category of either new certificates or renewal certificates received subsequent to the effective date of this Rule, shall be accompanied by a "Certification Law and Rules Examination" to be completed by the applicant as part of the application process.

C. Applicants who pass the required examinations, and meet the minimum education and experience requirements, and are actively employed by a water or wastewater system, will be notified that they may apply for the earned professional operator certification.

D. Applicants who pass an examination but do not meet the education and experience requirements will be notified of what education and/or experience and/or training is required to qualify. Such applicants, upon payment of the prescribed fee, will be issued a provisional certification in the classification(s) for which they have passed the examination(s). At whatever time the applicant qualifies, an application with the necessary fee must be submitted or re-examination may be required.

E. Individuals who have combined work experience in both water and wastewater may make written application to the certification committee for credit toward certification in either or both of the two categories. The work experience will be listed in a detailed resumé application which details the overlapping areas of work responsibility. This application will be certified by the immediate supervisor of the individual requesting certification. The committee of certification will rule on each individual application as presented. These applications will be reviewed twice a year by a screening subcommittee composed of members of the operator certification committee.

F. One individual may be designated as the operator over (several) more than one water or wastewater system or district provided that he can demonstrate that he is actively involved on a day-to-day basis in the operation of each of the systems, and is able to respond to the systems locations within one hour of notification that his presence is required.

G. Experience must be in actual water system or sewage system operation or its approved equivalent and must be in the field applying to the respective certificates. Experience as foreman or supervisor in most capacities in water and sewerage systems may be considered acceptable. Experience in purely clerical capacity, such as accounting, bookkeeping cannot be considered as acceptable experience. Experience in narrow technical capacities, such as laboratory technicians or meter readers may be considered for partial credit by the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:505 (March 2002), repromulgated LR 28:841 (April 2002).

**§7327. Renewal and Recertification**

A. Renewal Requirements. In order to qualify for renewal of certificates held in any and all classes, all operators of water and sewerage works shall enumerate, certify and provide evidence that he/she has attended a minimal number of contact hours of approved operator training for each certificate held during the previous two-year certification period. A minimum of 16 contact hours is required for renewal of any certifications held in water categories or 8 hours per certificate whichever is the greater. Likewise, a minimum of 16 contact hours is required for renewal of any certifications held in wastewater categories. Failure to attend the required training or failure to furnish the required information shall constitute grounds for refusal to renew the certificate. Approved training is defined as the completion of any of the training courses listed in §7329. It is strongly recommended that course outlines (or lesson plans) for other proposed in-service training be submitted for approval prior to the proposed date of training.

B. Recertification. Operators for whom certification has been expired in excess of two years are not eligible to renew their license(s), and shall be required to reapply for certification under the provisions of this Rule. In such cases, applicants shall be re-examined and shall demonstrate compliance with appropriate education and experience requirements before any certificates will be issued. In those instances where an operator's license has previously been revoked by the committee, the committee shall recommend any additional requirements for recertification that are deemed appropriate, and rule on the operator's eligibility to reapply for a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002).

**§7329. Training C General**

A. Training Courses Available. To be approved for training credit by the Administrator of the Operator Certification Program, the training courses identified in Paragraph B of this Section must meet the following general requirements.

1. The administrator must have on file a copy of the course outline of the training course, seminar, workshop, etc. to make his approval decision.

2. Information must include dates, place held, sponsoring organization, speakers/instructors and time (length of subject), and target audience (category and levels of certification addressed).

3. No blanket approvals (from year to year) will be given or implied and a separate approval must be given by the Operator Certification Program each time training is given. On doubtful courses, the administrator will bring the matter to the committee of certification for disposition. (An aggrieved applicant may apply for an administrative hearing to be conducted by a panel of the committee of certification.)

4. Operators shall be responsible to assure the sponsoring organization submitting his certified transcript of training credits earned to the administrator.

B. Training courses, short courses, technical sessions, seminars, workshops, etc., recognized by both the committee of certification and department include, but are not limited to the following:

1. annual short course of the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes;

2. regional conferences of one or more days sponsored and/or co-sponsored by the Louisiana Conference on Water Supply, Sewerage and Industrial Wastes;

3. American Water Works Association Annual Conferences, technical sessions, seminars and workshops;

4. National Association of Water Companies Annual Conferences seminars and workshops;

5. Southwest Section, American Water Works Association Annual Conference, technical sessions, seminars and workshops;

6. college or university and vocational-technical sponsored water and/or wastewater courses, as approved by the certification committee;

7. Water Environment Federation Annual Conference, regional meetings, technical sessions, seminars and workshops;

8. Louisiana Water Environment Association regional meetings, technical sessions, seminars and workshops;

9. Louisiana Rural Water Association annual training and technical conference, regional meetings, technical sessions, seminars and workshops;

10. Louisiana Environmental Training Center, at University of Louisiana at Lafayette, training courses, technical sessions, seminars and workshops;

11. regional meetings, technical sessions, seminars, workshops and/or training programs, sponsored and/or co-sponsored by the Department of Health and Hospitals, or the Department of Environmental Quality;

12. water and/or wastewater operator training courses approved for certification examinations by the committee of certification;

13. short schools, technical courses, seminars, workshops and training programs sponsored by other states.

C. A water and/or wastewater organization or utility not listed above may apply to the committee of certification for recognition and approval to conduct a training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:506 (March 2002), repromulgated LR 28:842 (April 2002).

**§7331. Examinations in Conjunction with Training Courses**

A. Applicants for approved training courses may request that certification exams be conducted following the completion of the course. In order to obtain approval from the committee of certification, the applicant (sponsoring individual or organization) must comply with the following requirements and rules.

B. The applications must be submitted to: Administrator, Operator Certification Program, Louisiana Department of Health and Hospitals, Office of Public Health, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810.

C. Applications must be submitted 30 days prior to the beginning of the course.

D. No exam shall be conducted without prior written approval.

E. Blanket approval for training courses and exams will not be given by the committee of certification, i.e., each training course and each exam period must be approved according to these Rules.

F. No exam shall be approved to follow a training course consisting of less than 32 hours. An exception to this Rule may be granted to the Louisiana Conference on Water Supply, Sewerage and Industrial Waste as this organization and its sub-organizations comprise the official training arm of the committee of certification.

G. Approval will be given to conduct exams only for the classes and categories covered by the training course, i.e., for training in Class I, II, III or IV in production, treatment or distribution, or wastewater collection or treatment.

H. The classes and categories for which the course is designed must be stated in the application.

I. The applicant must submit a detailed course outline to include:

1. the goal of the training course;

2. which operators in water and/or wastewater would benefit from taking the course;

3. each subject to be covered;

4. a formal lesson plan for each subject area to be covered;

5. the number of hours covered in each subject;

6. what references will be supplied in the course;

7. what references and materials the student should bring to the course.

J. The applicant must submit the names of all instructors, and their qualifications, including their education and work experience credentials and their certification levels. Instructors shall possess, at a minimum, a "provisional" certification in the subject area covered; or, shall have completed a qualified instructor training course or equivalent; or, be specifically accepted by the committee based upon their credentials.

K. Only those examinations prepared under the auspices of the administrator and the committee of certification will be recognized for certification.

L. All examinations will be conducted and monitored by members of the staff of the department and/or members of the committee of certification. No exams will be conducted without the presence of a sufficient number of monitors approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002).

**§7333. Examination Fees**

A. All fees for examinations shall be paid to the committee of certification.

B. Examination Fees shall be established as authorized by the Legislature, but in no case shall be less than $5 per exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002).

**§7335. Certification Fees**

A. Certificate fees, in addition to the examination fee, shall be:

1. collected for issuance, renewal and/or reciprocation of all classes of certificates. The amount of the certificate fee shall be as established by the legislature, but in no case shall be less than $10 for certification in the first category in water and/or sewerage and an additional $5 for each added category;

2. communities, municipalities, utilities and/or corporations may elect to utilize a flat fee system regarding their employees' certification. For a fee of $50 per year for either field of water or sewerage or $100 per year for both, all eligible operators may be certified, either initially or renewed. In addition to the flat fee, there will be a $5 per certificate charge for each certificate issued. In the instance of the flat fee, the individual operators at each facility will

be the responsibility of the principal of the organization and shall be submitted with each renewal (flat fee) payment;

3. duplicate certificates will be issued for a fee of not less than $5 per certificate.

4. water and wastewater operator certificates will be renewed on a two-year basis, with the fees remaining at the same annual rates as are currently in effect but collected every two years.

5. fees are to be paid in the form of a check or money order payable to the Committee of Certification, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810. Failure to attend the required training or failure to furnish the required information shall constitute grounds for refusal to renew the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:843 (April 2002).

**§7337. Reciprocity**

A. Reciprocity shall be granted at the discretion of the committee of certification, without examination, to holders of comparable certificates issued by other states, territories, or possessions of the United States. The applicant for a certificate under the reciprocity clause must submit his application on an official application blank, obtainable from the administrator. The application must be accompanied by the appropriate fee. The applicant must submit a copy of his certificate or other proof, satisfactory to the committee of certification that he holds a certificate issued by a governmental agency of another state, territory or possession of the United States. Such certificates must have been received after passage of an examination at least equivalent to that given by the Louisiana committee of certification for the level of competency for which application is made.

B. The burden of proof to submit sufficient information for the committee of certification's consideration shall be upon the applicant. If, after receiving such an application, the committee of certification is satisfied that the applicant qualifies for a certificate, it may, at its discretion award him a certificate in the appropriate grade. A reciprocal certificate will not ordinarily be issued unless the applicant is employed, or has accepted employment, in a Louisiana water or wastewater facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002).

**§7339. Notification**

A. Failure to receive any notices previously mentioned does not relieve the certificate holder or applicant from complying with the rules of the committee of certification. The burden is upon the certificate holder or applicant to provide the committee of certification with a current mailing address.

B. Any request for applications, training course approvals, reciprocity, etc., and/or questions on operator certification should be addressed to: Administrator, Operator Certification Program, DHH-OPH, 6867 Bluebonnet Boulevard, Baton Rouge, LA 70810.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1141-1151.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:507 (March 2002), repromulgated LR 28:844 (April 2002).

The amendment to Chapter XII of the Sanitary Code, State of Louisiana reads as follows:

**Sanitary Code, State of Louisiana**
**Chapter XII (Water Supplies)**

* * *

**12:003-2: Plant Supervision and Control**: All public water supplies shall be under the supervision and control of a duly certified operator as per requirements of the State Operator Certification Act, Act 538 of 1972, as amended (R.S. 40:1141-1151).

* * *

David W. Hood
Secretary

0204#038

**RULE**

**Department of Insurance**
**Office of the Commissioner**

Regulation 77**C**Medical Necessity Review Organizations
(LAC 37:XIII.Chapter 62)

In accordance with the provisions of R.S. 49:953 of the Administrative Procedure Act and R.S. 22:3090, the Department of Insurance has adopted the following Rule regarding standards for determining the necessity of medical care or services recommended by health care providers. This Rule is necessary to establish reasonable requirements for limiting covered services included in a policy or contract of insurance coverage that do not misrepresent the benefits, advantages, conditions, or terms of the policy issued, or to be issued, based on medical necessity determinations. This Rule establishes the statutory requirements for health insurance issuers who seek to make such limitations in products sold in this state and establish the standards for Medical Necessity Review Organizations seeking licensure under Title 22 of the Louisiana Revised Statutes of 1950.

**Title 37**
**INSURANCE**
**Part XIII. Regulations**

**§6201. Purpose**

A. The purpose of this regulation is to enforce the statutory requirements of Title 22 of the Louisiana Revised Statutes of 1950 that require health insurance issuers who seek to establish exception criteria or limitations on covered benefits that are otherwise offered and payable under a policy or certificate of coverage sold in this state, by requiring a medical necessity determination to be made by the health insurance issuer. The statutory requirements also apply to any health benefit plan that establishes exception criteria or limitations on covered benefits that are otherwise offered and payable under a non-federal government benefit plan. Additionally, the statute establishes a process for Medical Necessity Review Organizations to qualify for state licensure and Independent Review Organizations to become certified by the Department of Insurance. The statutory requirements establish the intent of the legislature to assure

licensed health insurance issuers and non-federal government benefit plans meet minimum quality standards and do not utilize any requirement that would act to impinge on the ability of insureds or government employees to receive appropriate medical advice and/or treatment from a health care professional. This Regulation has no effect on the statutory requirements of R.S. 22:657. Emergency medical conditions as defined in R.S. 22:657 shall be covered and payable as provided therein.

This regulation implements the statutory requirements of R.S. §§22:2021, and Chapter 7 of Title 22 of the Louisiana Revised Statutes regarding the use of medical necessity to limit stated benefits in a fully insured health policy or HMO certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:844 (April 2002).

**§6203. Definitions**

*Adverse Determination***C**a determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and denied, reduced, or terminated by a reviewer based on medical necessity, appropriateness, health care setting, level of care, or effectiveness.

*Ambulatory Review***C**a review of health care services performed or provided in an outpatient setting.

*Appropriate Medical Information***C**all outpatient and inpatient medical records that are pertinent to the evaluation and management of the covered person and that permit the Medical Necessity Review Organization to determine compliance with the applicable clinical review criteria. In the review of coverage for particular services, these records may include, but are not necessarily limited to, one or more of the following portions of the covered person's medical records as they relate directly to the services under review for medical necessity: admission history and physical examination report, physician's orders, progress notes, nursing notes, operative reports, anesthesia records, hospital discharge summary, laboratory and pathology reports, radiology or other imaging reports, consultation reports, emergency room records, and medication records.

*Authorized Representative***C**a person to whom a covered person has given written consent to represent the covered person in an internal or external review of an adverse determination of medical necessity. *Authorized Representative* may include the covered person's treating provider, if the covered person appoints the provider as his authorized representative and the provider agrees and waives in writing, any right to payment from the covered person other than any applicable copayment or coinsurance amount. In the event that the service is determined not to be medically necessary by the MNRO/IRO, and the covered person or his authorized representative thereafter requests the services, nothing shall prohibit the provider from charging the provider's usual and customary charges for all MNRO/IRO determined non-medically necessary services provided when such requests are in writing.

*Case Management***C**a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

*Certification* or *Certify***C**a determination by a reviewer regarding coverage of an admission, continued stay, or other health care service for the purpose of determining medical necessity, appropriateness of the setting, or level of care.

*Clinical Peer***C**a physician or other health care professional who holds an unrestricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review. Non-physician practitioners, including but not limited to nurses, speech and language therapists, occupational therapists, physical therapists, and clinical social workers, are not considered to be clinical peers and may not make adverse determinations of proposed actions of physicians (medical doctors shall be clinical peers of medical doctors, etc.).

*Clinical Review Criteria***C**the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a reviewer to determine the necessity and appropriateness of covered health care services.

*Commissioner***C**the commissioner of insurance.

*Concurrent Review***C**a review of medical necessity, appropriateness of care, or level of care conducted during a patient's stay or course of treatment.

*Covered Benefits* or *Benefits***C**those health care services to which a covered person is entitled under the terms of a health benefit plan.

*Covered Person***C**a policyholder, subscriber, enrollee, or other individual covered under a policy of health insurance or HMO subscriber agreement.

*Discharge Planning***C**the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

*Disclose***C**to release, transfer, or otherwise divulge protected health information to any individual, entity, or person other than the individual who is the subject of the protected health information.

*Emergency Medical Condition***C**a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. placing the health of the individual in serious jeopardy;
2. with respect to a pregnant woman, placing the health of the woman or her unborn child in serious jeopardy;
3. serious impairment to bodily function; or
4. serious dysfunction of any bodily organ or part.

*Entity***C**an individual, person, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, any similar entity, agent, or contractor, or any combination of the foregoing.

*External Review Organization***C**an independent review organization that conducts independent external reviews of adverse determinations and final adverse determinations and whose accreditation or certification has been reviewed and approved by the Department of Insurance.

*Facility***C**an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, inpatient hospice facilities, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

*Final Adverse Determination***C**an adverse determination that has been upheld by a reviewer at the completion of the medical necessity review organization's internal review process as set forth in this Chapter.

*Health Benefit Plan***C**group and individual health insurance coverage, coverage provided under a group health plan, or coverage provided by a nonfederal governmental plan, as those terms are defined in R.S. 22:250.1. *Health Benefit Plan* shall not include a plan providing coverage for excepted benefits as defined in R.S. 22:250.1(3).

*Health Care Professional***C**a physician or other health care practitioner licensed, certified, or registered to perform specified health services consistent with state law.

*Health Care Provider* or *Provider***C**a health care professional, the attending, ordering, or treating physician, or a facility.

*Health Care Services***C**services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

*Health Information***C**information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

1. the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;
2. the provision of health care services to a covered person; or
3. payment for the provision of health care services to a covered person.

*Health Insurance Coverage***C**benefits consisting of medical care provided or arranged for directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

*Health Insurance Issuer***C**an insurance company, including a health maintenance organization, as defined and licensed pursuant to Part XII of Chapter 2 of this Title, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974.

*Medical Necessity Review Organization* or *MNRO***C**a health insurance issuer or other entity licensed or authorized pursuant to this Chapter to make medical necessity determinations for purposes other than the diagnosis and treatment of a medical condition.

*Prospective Review***C**a review conducted prior to an admission or a course of treatment.

*Protected Health Information***C**health information that either identifies a covered person who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

*Retrospective Review***C**a review of medical necessity conducted after services have been provided to a patient, but shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

*Second Opinion***C**an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:845 (April 2002).

**§6205. Authorization or Licensure as an MNRO**

A. No health insurance issuer or health benefit plan, as defined in this chapter, shall act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar medical determinations unless authorized to act as an MNRO by the commissioner as provided in this Chapter. Benefits covered under a health benefit plan sold or in effect in this state on or after January 1, 2001 shall be limited, excluded, or excepted from coverage under any medical necessity determination requirement, appropriateness of care determination, level of care needed, or any other similar determination only when such determination is made by an authorized or licensed MNRO as provided in this Chapter.

B. No entity acting on behalf of or as the agent of a health insurance issuer may act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations unless licensed as an MNRO by the commissioner as provided in this Chapter.

C. Any other entity may apply for and be issued a license under this Chapter to act as an MNRO for the purposes of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations on behalf of a health benefit plan.

D. Any entity licensed or authorized as an MNRO shall be exempt from the requirements of R.S. 40:2721 through 2736. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance.

E. An integrated health care network or other entity contracting with a health insurance issuer for provision of

covered services under a risk sharing arrangement, shall be allowed to make initial adverse medical necessity determinations provided the health insurance issuer remains responsible for provision of internal and external review requirements and has submitted the information required under subsection B.5 of section 6207 for review and approval. In such instances, a covered person's request for an internal or external appeal of an adverse determination shall not require concurrence by a provider reimbursed under a risk sharing arrangement with the health insurance issuer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:846 (April 2002).

**§6207. Procedure for Application to act as an MNRO**

A. Any applicant for licensure other than a health insurance issuer shall submit an application to the commissioner and pay an initial licensure fee as specified in §6211.D. The application shall be on a form and accompanied by any supporting documentation required by the commissioner and shall be signed and verified by the applicant. The information required by the application shall include:

1. the name of the entity operating as an MNRO and any trade or business names used by that entity in connection with making medical necessity determinations;

2. the names and addresses of every officer and director of the entity operating as an MNRO, as well as the name and address of the corporate officer designated by the MNRO as the corporate representative to receive, review, and resolve all grievances addressed to the MNRO;

3. the name and address of every person owning, directly or indirectly, five percent or more of the entity operating as an MNRO;

4. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

5. a general description of the operation of the MNRO, which includes a statement that the MNRO does not engage in the practice of medicine or acts to impinge or encumber the independent medical judgment of treating physicians or health care providers;

6. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of §6213 of this Chapter);

7. a sample copy of any contract, absent fees charged, with a health insurance issuer, nonfederal government health benefit plan, or other group health plan for making determinations of medical necessity;

8. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations; and

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character;

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

B. A health insurance issuer holding a valid certificate of authority to operate in this state may be authorized to act as an MNRO under the requirements of this Chapter following submission to the commissioner of appropriate documentation for review and approval that shall include, but need not be limited, to the following:

1. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

2. a general description of the operation of the MNRO which includes a statement that the MNRO does not engage in the practice of medicine or act to impinge upon or encumber the independent medical judgment of treating physicians or health care providers;

3. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. (Such program description shall evidence compliance with requirements of Section 6213 of this Chapter);

4. a sample copy of any contract, absent fees charged, with another health insurance issuer for making determinations of medical necessity;

5. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations;

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character; and

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and, 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:847 (April 2002).

**§6211. Expiration and Renewal of License for Entities other than Health Insurance Issuers**

A. Licensure pursuant to this Chapter shall expire two years from the date approved by the commissioner unless the license is renewed for a two-year term as provided in this Section.

B. Before a license expires, it may be renewed for an additional two-year term if the applicant pays a renewal fee as provided in this Section and submits to the commissioner a renewal application on the form that the commissioner requires.

C. The renewal application required by the commissioner shall include, but need not be limited to, the information required for an initial application.

D. The fee for initial licensure and the fee for renewal of licensure shall each be $1,500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014 and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:848 (April 2002).

**§6213. Scope and Content of Medical Necessity Determination Process**

A. An MNRO shall implement a written medical necessity determination program that describes all review activities performed for one or more health benefit plans. The program shall include the following:

1. the methodology utilized to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services;

2. data sources and clinical review of criteria used in decision-making. The appropriateness of clinical review criteria shall be fully documented;

3. the process for conducting appeals of adverse determinations including informal reconsiderations;

4. mechanisms to ensure consistent application of review criteria and compatible decisions;

5. data collection processes and analytical methods used in assessing utilization of health care services;

6. provisions for assuring confidentiality of clinical and proprietary information;

7. the organizational structure, including any review panel or committee, quality assurance committee, or other committee that periodically accesses health care review activities and reports to the health benefit plan;

8. the medical director's responsibilities for day-to-day program management;

9. any quality management program utilized by the MNRO.

B. An MNRO shall file with the commissioner an annual summary report of its review program activities that includes a description of any substantive changes that have been implemented since the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:848 (April 2002).

**§6215. Medical Necessity Review Organization Operational Requirements**

A. An MNRO shall use documented clinical review criteria that are based on sound clinical evidence. Such criteria shall be evaluated at least annually and updated if necessary to assure ongoing efficacy. An MNRO may develop its own clinical review criteria or it may purchase, license or contract for clinical review criteria from qualified vendors. An MNRO shall make available its clinical review criteria upon request to the commissioner who shall be authorized to request affirmation of such criteria from other appropriate state regulatory agencies.

B. An MNRO shall have a medical director who shall be a duly licensed physician. The medical director shall administer the program and oversee all adverse review decisions. Adverse determinations shall be made only by a duly licensed physician or clinical peer. An adverse determination made by an MNRO in the second level review shall become final only when a clinical peer has evaluated and concurred with such adverse determination.

C. An MNRO shall issue determination decisions in a timely manner pursuant to the requirements of this Chapter. At the time of the request for review, an MNRO shall notify the requestor of all documentation required to make a medical review determination. The requestor may include the covered person, an authorized representative, or a provider. In the event that the MNRO determines that additional information is required, it shall notify the requestor by telephone, within one workday of such determination, to request any additional appropriate medical information required. An MNRO shall obtain all information required to make a medical necessity determination, including pertinent clinical information, and shall have a process to ensure that qualified health care professionals performing medical necessity determinations apply clinical review criteria consistently.

D. At least annually, an MNRO shall routinely assess the effectiveness and efficiency of its medical necessity determination program and report any deficiencies or changes to the commissioner. Deficiencies shall include complaint investigations by the department or grievances filed with the MNRO that prompted the MNRO to change procedures or protocols.

E. An MNRO's data systems shall be sufficient to support review program activities and to generate management reports to enable the health insurance issuer or other contractor to monitor its activities.

F. Health insurance issuers who delegate any medical necessity determination functions to an MNRO shall be responsible for oversight, which shall include, but not be limited to, the following:

1. a written description of the MNRO's activities and responsibilities, including reporting requirements;

2. evidence of formal approval of the medical necessity determination program by the health insurance issuer;

3. a process by which the health insurance issuer monitors or evaluates the performance of the MNRO.

G. Health insurance issuers who perform medical necessity determinations shall coordinate such program with

other medical management activities conducted by the health insurance issuer, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

H. An MNRO shall provide health care providers with access to its review staff by a toll-free number that is operational for any period of time that an authorization, certification, or approval of coverage is required.

I. When conducting medical necessity determinations, the MNRO shall request only the information necessary to certify an admission to a facility, procedure or treatment, length of stay, frequency, level of care or duration of health care services.

J. Compensation to individuals participating in a medical necessity determination program shall not contain incentives, direct or indirect, for those individuals to make inappropriate or adverse review determinations. Compensation to any such individuals shall not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

K. An adverse determination shall not be based on the outcome of care or clinical information not available at the time the certification was made, regardless of whether the covered person or provider assumes potential liability for the cost of such care while awaiting a coverage determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:848 (April 2002).

**§6217. Procedures for Making Medical Necessity Determinations**

A. An MNRO shall maintain written procedures for making determinations and for notifying covered persons and providers and other authorized representatives acting on behalf of covered persons of its decisions.

B.1. In no less than eighty percent of initial determinations, an MNRO shall make the determination within two working days of obtaining any appropriate medical information that may be required regarding a proposed admission, procedure, or service requiring a review determination. In no instance shall any determination of medical necessity be made later than thirty days from receipt of the request unless the patient's physician or other authorized representative has agreed to an extension.

2. In the case of a determination to certify a nonemergency admission, procedure, or service, the MNRO shall notify the provider rendering the service within one work day of making the initial certification and shall provide documented confirmation of such notification to the provider within two working days of making the initial certification.

3. In the case of an adverse determination of a nonemergency admission, the MNRO shall notify the provider rendering the service within one workday of making the adverse determination and shall provide documented confirmation of the notification to the provider within two working days of making the adverse determination.

C.1. For concurrent review determinations of medical necessity, an MNRO shall make such determinations within one working day of obtaining the results of appropriate medical information that may be required.

2. In the case of a determination to certify an extended stay or additional services, the MNRO shall notify the provider rendering the service within one working day of making the certification and shall provide documented confirmation to the provider within two working days of the authorization. Such documented notification shall include the number of intended days or next review date and the new total number of days or services approved.

3. In the case of an adverse determination, the MNRO shall notify the provider rendering the service within one working day of making the adverse determination and shall provide documented notification to the provider within one workday of such notification. The service shall be authorized and payable by the health insurance issuer without liability, subject to the provisions of the policy or subscriber agreement, until the provider has been notified in writing of the adverse determination. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider unless notified of such liability in advance.

D.1. For retrospective review determinations, the MNRO shall make the determination within 30 working days of obtaining the results of any appropriate medical information that may be required, but in no instance later than 180 days from the date of service. The MNRO shall not subsequently retract its authorization after services have been provided or reduce payment for an item or service furnished in reliance upon prior approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider or unless the coverage was duly canceled for fraud, misrepresentation, or nonpayment of premiums.

2. In the case of an adverse determination, the MNRO shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

E. A written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. An MNRO shall provide the clinical rationale in writing for an adverse determination, including the clinical review criteria used to make that determination, to any party who received notice of the adverse determination and who follows the procedures.

F. An MNRO shall have written procedures listing the health or appropriate medical information required from a covered person or health care provider in order to make a medical necessity determination. Such procedures shall be given verbally to the covered person or health care provider when requested. The procedures shall also outline the process to be followed in the event that the MNRO determines the need for additional information not initially requested.

G. An MNRO shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. In cases where

the provider or a covered person will not release necessary information, the MNRO may deny certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:849 (April 2002).

**§6219. Informal Reconsideration**

A. In a case involving an initial determination or a concurrent review determination, an MNRO shall give the provider rendering the service an opportunity to request, on behalf of the covered person, an informal reconsideration of an adverse determination by the physician or clinical peer making the adverse determination. Allowing a 10-day period following the date of the adverse determination for requesting an informal reconsideration shall be considered reasonable.

B. The informal reconsideration shall occur within one working day of the receipt of the request and shall be conducted between the provider rendering the service and the MNRO's physician authorized to make adverse determinations or a clinical peer designated by the medical director if the physician who made the adverse determination cannot be available within one working day.

C. If the informal reconsideration process does not resolve the differences of opinion, the adverse determination may be appealed by the covered person or the provider on behalf of the covered person. Informal reconsideration shall not be a prerequisite to a standard appeal or an expedited appeal of an adverse determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:850 (April 2002).

**§6221. Appeals of Adverse Determinations; Standard Appeals**

A. An MNRO shall establish written procedures for a standard appeal of an adverse determination, which may also be known as a first level internal appeal. Such procedures shall be available to the covered person and to the provider acting on behalf of the covered person. Such procedures shall provide for an appropriate review panel for each appeal that includes health care professionals who have appropriate expertise. Allowing a 60-day period following the date of the adverse determination for requesting a standard appeal shall be considered reasonable.

B. For standard appeals, a duly licensed physician shall be required to concur with any adverse determination made by the review panel.

C. The MNRO shall notify in writing both the covered person and any provider given notice of the adverse determination, of the decision within thirty working days following the request for an appeal, unless the covered person or authorized representative and the MNRO mutually agree that a further extension of the time limit would be in the best interest of the covered person. The written decision shall contain the following:

1. the title and qualifying credentials of the physician affirming the adverse determination;

2. a statement of the reason for the covered person's request for an appeal;

3. an explanation of the reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the MNRO's position;

4. if applicable, a statement including the following:

a. a description of the process to obtain a second level review of a decision;

b. the written procedures governing a second level review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:850 (April 2002).

**§6223. Second Level Review**

A. An MNRO shall establish a second level review process to give covered persons who are dissatisfied with the first level review decision the option to request a review at which the covered person has the right to appear in person before authorized representatives of the MNRO. An MNRO shall provide covered persons with adequate notice of this option, as described in Section 6221.C. Allowing a 30-day period following the date of the notice of an adverse standard appeal decision shall be considered reasonable.

B. An MNRO shall conduct a second level review for each appeal. Appeals shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination. A majority of any review panel used shall be comprised of persons who were not previously involved in the appeal. However, a person who was previously involved with the appeal may be a member of the panel or appear before the panel to present information or answer questions. The panel shall have the legal authority to bind the MNRO and the health insurance issuer to the panel's decision.

C. An MNRO shall ensure that a majority of the persons reviewing a second level appeal are health care professionals who have appropriate expertise. An MNRO shall issue a copy of the written decision to a provider who submits an appeal on behalf of a covered person. In cases where there has been a denial of service, the reviewing health care professional shall not have a material financial incentive or interest in the outcome of the review.

D. The procedures for conducting a second level review shall include the following.

1. The review panel shall schedule and hold a review meeting within 45 working days of receivinga request from a covered person for a second level review. The review meeting shall be held during regular business hours at a location reasonably accessible to the covered person. In cases where a face-to-face meeting is not practical for geographic reasons, an MNRO shall offer the covered person and any provider given a notice of adverse determination the opportunity to communicate with the review panel, at the MNRO's expense, by conference call, video conferencing, or other appropriate technology. The covered person shall be notified of the time and place of the review meeting in writing at least 15 working days in

advance of the review date; such notice shall also advise the covered person of his rights as specified in Paragraph three of this Subsection. The MNRO shall not unreasonably deny a request for postponement of a review meeting made by a covered person.

2. Upon the request of a covered person, an MNRO shall provide to the covered person all relevant information that is not confidential or privileged.

3. A covered person shall have the right to the following:

a. attend the second level review;

b. present his case to the review panel;

c. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting;

d. ask questions of any representative of the MNRO.

4. The covered person's right to a fair review shall not be made conditional on the covered person's appearance at the review.

5. For second level appeals, a duly licensed and appropriate clinical peer shall be required to concur with any adverse determination made by the review panel.

6. The MNRO shall issue a written decision to the covered person within five working days of completing the review meeting. The decision shall include the following:

a. the title and qualifying credentials of the appropriate clinical peer affirming an adverse determination;

b. a statement of the nature of the appeal and all pertinent facts;

c. the rationale for the decision;

d. reference to evidence or documentation used in making that decision;

e. the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination;

f. notice of the covered person's right to an external review, including the following:

i. a description of the process to obtain an external review of a decision;

ii. the written procedures governing an external review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:850 (April 2002).

**§6225. Request for External Review**

A. Each health benefit plan shall provide an independent review process to examine the plan's coverage decisions based on medical necessity. A covered person, with the concurrence of the treating health care provider, may make a request for an external review of a second level appeal adverse determination.

B. Except as provided in this Subsection, an MNRO shall not be required to grant a request for an external review until the second level appeal process as set forth in this Chapter has been exhausted. A request for external review of an adverse determination may be made before the covered person has exhausted the MNRO's appeal, if any of the following circumstances apply.

1. The covered person has an emergency medical condition, as defined in this Chapter.

2. The MNRO agrees to waive the requirements for the first level appeal, the second level appeal, or both.

C. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.1 of this Section, the covered person's treating health care provider may request an expedited external review. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.2 of this Section, a standard external review shall be performed.

D. Nothing in this Section shall prevent an MNRO from establishing an appeal process, approved by the commissioner, that provides persons who are dissatisfied with the first level review decision an external review in lieu of requiring a second level review prior to requesting such external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:851 (April 2002).

**§6227. Standard External Review**

A. Within sixty days after the date of receipt of a notice of a second level appeal adverse determination, thecovered person whose medical care was the subject of such determination may, with the concurrence of the treating health care provider, file a request for an external review with the MNRO. Within seven days after the date of receipt of the request for an external review, the MNRO shall provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization. The independent review organization shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider. The independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;

2. the treating health care professional's recommendation;

3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, covered person, or the covered person's treating provider;

4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation unless the criteria had been reviewed and certified by the appropriate licensing board of this state.

B. The independent review organization shall provide notice of its recommendation to the MNRO, the covered person or his authorized representative and the covered person's health care provider within 30 days after the date of receipt of the second level determination information subject

to an external review, unless a longer period is agreed to by all parties.

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: La. R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:851 (April 2002).

**§6229. Expedited Appeals**

A. An MNRO shall establish written procedures for the expedited appeal of an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. An expedited appeal shall be available to and may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person.

B. Expedited appeals shall be evaluated by an appropriate clinical peer or peers in the same or a similar specialty as would typically manage the case under review. The clinical peer or peers shall not have been involved in the initial adverse determination.

C. An MNRO shall provide an expedited appeal to any request concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. Such emergency services may include services delivered in the emergency room, during observation, or other setting that resulted in direct admission to a facility.

D. In an expedited appeal, all necessary information, including the MNRO's decision, shall be transmitted between the MNRO and the covered person, or his authorized representative, or the provider acting on behalf of the covered person by telephone, telefacsimile, or any other available expeditious method.

E. In an expedited appeal, an MNRO shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than 72 hours after the appeal is commenced. If the expedited appeal is a concurrent review determination, the service shall be authorized and payable, subject to the provisions of the policy or subscriber agreement, until the provider has been notified of the determination in writing. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider until documented notification of such liability is provided to the covered person.

F. An MNRO shall provide written confirmation of its decision concerning an expedited appeal within two working days of providing notification of that decision if the initial notification was not in writing. The written decision shall contain the information specified in R.S. 22:3079.C(1) through (3).

G. An MNRO shall provide reasonable access, within a period of time not to exceed one workday, to a clinical peer who can perform the expedited appeal.

H In any case where the expedited appeal process does not resolve a difference of opinion between the MNRO and the covered person or the provider acting on behalf of the covered person, such provider may request a second level appeal of the adverse determination.

I. An MNRO shall not provide an expedited appeal for retrospective adverse determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:852 (April 2002).

**§6231. Expedited External Review of Urgent Care Requests**

A. At the time that a covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review. Approval of such requests shall not unreasonably be withheld.

B. For emergency medical conditions, the MNRO shall provide or transmit all necessary documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or any other available expeditious method.

C. In addition to the documents and information provided or transmitted, the independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;

2. the treating health care professional's recommendation;

3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, the covered person, or the covered person's treating provider;

4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations.;

5. Any applicable clinical review criteria developed exclusively and used by the MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation, unless the criteria had been reviewed and certified by the appropriate state licensing board of this state.

D. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization shall do the following:

1. make a decision to uphold or reverse the adverse determination;

2. notify the covered person, the MNRO, and the covered person's health care provider of the decision. Such notice shall include the principal reason or reasons for the decision and references to the evidence or documentation considered in making the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:852 (April 2002).

**§6233. Binding Nature of External Review Decisions**

A. Coverage for the services required under this Chapter shall be provided subject to the terms and conditions

generally applicable to benefits under the evidence of coverage under a health insurance policy or HMO subscriber agreement. Nothing in this Chapter shall be construed to require payment for services that are not otherwise covered pursuant to the evidence of coverage under the health insurance policy or HMO subscriber agreement or otherwise required under any applicable state or federal law.

B. An external review decision made pursuant to this Chapter shall be binding on the MNRO and on any health insurance issuer or health benefit plan that utilizes the MNRO for making medical necessity determinations. No entity shall hold itself out to the public as following the standards of a licensed or authorized MNRO that does not adhere to all requirements of this Chapter including the binding nature of external review decisions.

C. An external review decision shall be binding on the covered person for purposes of determining coverage under a health benefit plan that requires a determination of medical necessity for a medical service to be covered.

D. A covered person or his representatives, heirs, assigns, or health care providers shall have a cause of action for benefits or damages against an MNRO, health insurance issuer, health benefit plan, or independent review organization for any action involving or resulting from a decision made pursuant to this Chapter if the determination or opinion was rendered in bad faith or involved negligence, gross negligence, or intentional misrepresentation of factual information about the covered person's medical condition. Causes of action for benefits or damages for actions involving or resulting from a decision made pursuant to this Chapter shall be limited to the party acting in bad faith, or involved in negligence, gross negligence or intentional misrepresentation of factual information about the covered person's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:852 (April 2002).

### §6235. Minimum Qualifications for Independent Review Organizations

A. The licensure, authorization, or certification of any entity as an MNRO or independent or external review organization shall be effective beginning on the date of first application for all entities who receive formal written authorization, licensure, or certification by the Commissioner of Insurance. This provision shall remain in effect until December 31, 2001. Any application filed after December 31, 2001 shall become effective upon final approval by the Department of Insurance and not upon date of first application. Therefore any application submitted and filed after December 31, 2001, the licensure, authorization or certification of an entity as an MNRO or independent or external review organization shall be effective upon the date final approval is granted by the Commissioner of Insurance. To qualify to conduct external reviews for an MNRO, an independent review organization shall meet the following minimum qualifications:

1. develop written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process that include, at a minimum, the following:

a. procedures to ensure that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner;

b. procedures to ensure the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases;

c. procedures to ensure the confidentiality of medical and treatment records and clinical review criteria;

d. procedures to ensure that any individual employed by or under contract with the independent review organization adheres to the requirements of this Chapter;

2. establish a quality assurance program;

3. establish a toll-free telephone service to receive information related to external reviews on a twenty-four-hour-day, seven-day-a-week basis that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours.

B. Any clinical peer reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care provider who meets the following minimum qualifications:

1. be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

2. be knowledgeable about the recommended health care service or treatment through actual clinical experience that may be based on either of the following:

a. the period of time spent actually treating patients with the same or similar medical condition of the covered person;

b. the period of time that has elapsed between the clinical experience and the present.

3. hold a nonrestricted license in a state of the United States and, in the case of a physician, hold a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

4. have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

C. In addition to the requirements of Subsection A of this Section, an independent review organization shall not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health insurance issuer, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

D. In addition to the other requirements of this Section, in order to qualify to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor the clinical peer reviewer assigned by the independent organization to conduct the external review shall have a material professional, familial, or financial interest with any of the following:

1. the MNRO that is the subject of the external review;

2. any officer, director, or management employee of the MNRO that is the subject of the external review;

3. the health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

4. the facility at which the recommended health care service or treatment would be provided;

5. the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review;

6. the covered person who is the subject of the external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:853 (April 2002).

**§6237. External Review Register**

A. An MNRO shall maintain written records in the aggregate and by health insurance issuer and health benefit plan on all requests for external review for which an external review was conducted during a calendar year, hereinafter referred to as the "register". For each request for external review, the register shall contain, at a minimum, the following information:

1. a general description of the reason for the request for external review;

2. the date received;

3. the date of each review;

4. the resolution;

5. the date of resolution;

6. except as otherwise required by state or federal law, the name of the covered person for whom the request for external review was filed.

B. The register shall be maintained in a manner that is reasonably clear and accessible to the commissioner.

C. The register compiled for a calendar year shall be retained for the longer of three years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year.

D. The MNRO shall submit to the commissioner, at least annually, a report in the format specified by the commissioner. The report shall include the following for each health insurance issuer and health benefit plan:

1. the total number of requests for external review;

2. the number of requests for external review resolved and their resolution;

3. a synopsis of actions being taken to correct problems identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

**§6239. Emergency Services**

A. Emergency services shall not be limited to health care services rendered in a hospital emergency room.

B. When conducting medical necessity determinations for emergency services, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a non-contracting provider within the service area of a managed care plan, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of the services if a prudent lay person would have reasonably believed that use of a contracting provider would result in a delay that would worsen the emergency or if a provision of federal, state, or local law requires the use of a specific provider.

C. If a participating provider or other authorized representative of a health insurance issuer or health benefit plan authorizes emergency services, the MNRO shall not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item, treatment, or service furnished in reliance upon approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider of emergency services.

D. Coverage of emergency services shall be subject to state and federal laws as well as contract or policy provisions, including co-payments or coinsurance and deductibles.

E. For immediately required post-evaluation or post-stabilization services, an MNRO shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

**§6241. Confidentiality Requirements**

A. An MNRO shall annually provide written certification to the commissioner that its program for determining medical necessity complies with all applicable state and federal laws establishing confidentiality and reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

**§6243. Severability**

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation that can be given effect without the invalid provisions, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:854 (April 2002).

**§6245. Effective Date**

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 2014; and 3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statute of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:855 (April 2002).

J. Robert Wooley
Acting Commissioner

0204#049

## RULE

## Department of Public Safety and Corrections
## Board of Private Investigator Examiners

Private Investigator Continuing Education
(LAC 46:LVII.518)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505.B.(1), the Louisiana Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, has amended Part LVII of Title 46, amending Chapter 5, Section 518, to require licensees to attend eight hours of continuing education every year (not every two years as the current law requires) and to further require renewal applications for each year to show compliance with this continuing education requirement.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Louisiana State Board of Private Investigator Examiners.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LVII. Louisiana State Board of Private Investigator Examiners**
**Chapter 5. Application, Licensing, Training, Registration and Fees**

**§518. Continuing Education**

A. Each licensed private investigator is required to complete a minimum of eight hours of approved investigative educational instruction within the one year period immediately prior to renewal in order to qualify for a renewal license.

B. Each licensed private investigator is required to complete and return the LSBPIE Continuing Educational Compliance form with the request for license renewal each year. The form shall be signed under penalty of perjury and shall include documentation of each hour of approved investigation educational instruction completed.

C. Any licensee who wishes to apply for an extension of time to complete educational instruction requirements must submit a letter request setting forth reasons for the extension request to the Executive Director of the LSBPIE 30 days prior to license renewal. The Training Committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days to complete the required hours. Hours completed during a 30 day extension shall only apply to the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505.B.(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:1016 (July 2001), LR 28:855 (April 2002).

Charlene Mora
Chairman

0204#017

## RULE

## Department of Public Safety and Corrections
## Gaming Control Board

Electronic Cards, General Credit Provisions
(LAC 42:III.201)

The Louisiana Gaming Control Board has adopted LAC 42:III.201 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**
**LOUISIANA GAMING**
**Part III. Gaming Control Board**
**Chapter 2. Electronic Cards**

**§201. General Credit Provisions**

A. No Casino Operator, Casino Manager or licensee, either directly or through any bank, financial institution, credit card company or similar entity, shall issue electronic cards or smart cards that have the capability of allowing patrons to access any line of credit or account, debit an account, or obtain credit through a credit agreement or otherwise allow any patron to incur debt in any manner not provided in the respective Casino Operator's, Casino Manager's or licensee's internal controls as approved by the division.

B. All electronic cards or smart cards issued by the Casino Operator, Casino Manager or any licensee for the purpose of wagering shall be prepaid with a fixed dollar amount that shall not be susceptible of being increased by patrons without purchasing additional value in a manner consistent with the respective Casino Operator's, Casino Manager's or licensee's internal controls as approved by the division.

C. Electronic cards or smart cards issued by the Casino Operator, Casino Manager or any licensee shall be used only for wagering at the respective Casino Operator's, or licensee's property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:855 (April 2002).

Hillary J. Crain
Chairman

0204#011

**RULE**

**Department of Public Safety and Corrections**
**Corrections Services**

Lost Property Claims (LAC 22:I.369)

The Department of Public Safety and Corrections, Corrections Services, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended the Lost Property Claim Rule.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter A. General**
**§369. Lost Property Claims**

A. The purpose of this section is to establish a uniform procedure for handling "lost property claims" filed by inmates in the custody of the Department of Public Safety and Corrections. All wardens are responsible for implementing and advising inmates and affected employees of its contents.

B. When an inmate suffers a loss of personal property, he may submit a claim to the warden. The claim should be submitted on the attached Form A. The claim must include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item, and any proof of ownership or value of the property available to the inmate. All claims for lost personal property must be submitted to the warden within 10 days of discovery of the loss.

C. Under no circumstances will an inmate be compensated for an unsubstantiated loss, or for a loss which results from the inmate's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other inmates.

D. The warden, or his designee, will assign an employee to investigate the claim. The investigative officer will investigate the claim fully and will submit his report and recommendations to the warden, or his designee.

E. If a loss of an inmate's personal property occurs through the negligence of the institution and/or its employees, the inmate's claim may be processed in accordance with the following procedures.

1. Monetary

a. The warden, or his designee, will recommend a reasonable value for the lost personal property (with the exception of personal clothing) as described on Form A. Liability will be pursuant to Department Regulation No. C-03-007 "Inmate Personal Property List, State Issued Items, Procedures for the Reception, Transfer, and Disposal of Inmate Personal Belongings;"

b. Forms B and C will be completed and submitted to the inmate for his signature; and

c. The claim will be submitted to the assistant secretary of Adult Services for review and final approval.

2. Nonmonetary

a. The inmate is entitled only to state issue where state issued items are available.

b. The institution's liability for any lost inmate clothing will be limited to the following.

i. For inmates processed through HRDC/WRDC/FRDC prior to March 31, 2000, replacement is limited to state issue where state issue is available.

ii. For inmates received through HRDC/WRDC/FRDC on or after March 31, 2000, the state does not assume liability for any personal clothing.

c. The warden, or his designee, will review the claim and determine whether or not the institution is responsible.

d. Form B will be completed and submitted to the inmate for his signature.

e. Form C will be completed and submitted to the inmate for his signature when state issue replacement has been offered.

F. If the warden, or his designee, determines that the institution and/or its employees are not responsible for the inmate's loss of property, the claim will be denied, and Form B will be submitted to the inmate indicating the reason. If the inmate is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on Form B and submitting it to the screening officer within five days of receipt. The screening officer will provide the inmate with an acknowledgment of receipt and date forwarded to the assistant secretary of Adult Services. A copy of the inmate's original Lost Personal Property Claim (Form A) and Lost Personal Property Claim Response (Form B) and other relevant documentation will be attached.

G. Form A **C** Lost Personal Property Claim

FORM A

LOST PERSONAL PROPERTY CLAIM

1. Inmate: _____
(Inmate's Name, DOC #, and location)
2. Date of Loss: _____
3. Circumstances which resulted in the loss of personal property:
_____
_____
_____

4. Items lost (include description) and value:
_____
_____
_____

NOTE: False claims or false representations of lost items' value will subject the inmate to disciplinary action.

5. Must attach proof of ownership and proof of value.
6. A claim must be submitted within 10 days of the date of loss. The claim is to be submitted to the Warden.

SUBMITTED BY: _____ _____
Inmate's Signature DOC # Date

H. Form B**C** Lost Personal Property Claim Response

FORM B

LOST PERSONAL PROPERTY CLAIM RESPONSE

CLAIM # _____

DATE: _____

TO: _____

(Inmate's Name, DOC # and location)

FROM: _____

Your request for reimbursement/settlement/replacement of your lost personal property has been reviewed with the below recommended actions:

❑ DENIED

____ Your records were reviewed and no proof of ownership is indicated
_____ Unallowable item at this institution
_____ Clothing/items improperly marked according to inmate posted policy
_____ Item illegally obtained
_____ Investigation reveals loss resulted from barter, gambling, or sale
_____ Investigation has proved your claim invalid or unsubstantiated
_____ Loss resulted in irresponsibility on your part to keep personal items secure in footlocker, cell, etc.
_____ Other _____

❑ APPROVED

_____ You are being offered state issue items as replacement for the items reported missing
_____ Monetary settlement in the amount of $_____ will be processed
_____ Other _____

Signature of Investigating Officer _____

_____
WARDEN

_____ _____
Inmate's Signature DOC # Date

❑ I am not satisfied with this decision and wish to appeal to the Assistant Secretary of Adult Services

I. Form C**C** Agreement

FORM C

AGREEMENT

I, _____, (Inmate's name and DOC #), having filed a claim for lost property on _____do hereby acknowledge receipt of _____ as full settlement, compromise, and discharge of any and all liability which exists or which might exist, and do hereby agree to release and discharge the State of Louisiana, Department of Public Safety and Corrections, and any and all of its agents, representatives, officers, and employees from any and all liability for compensation, damages, and all other amounts, if any, which might be due me by reason of the loss reported on _____ (date) (whether the liability, if any, be in damages, tort, or otherwise, or whether the liability, if any, be under the laws of the State of Louisiana, or the laws of the United States.) I agree to have this claim processed and settled in accordance with the terms set forth in the agreement.

WITNESSES:

_____ _____
Inmate's Signature DOC #

_____ _____
Date

WARDEN'S APPROVAL _____

SECRETARY'S APPROVAL _____
(necessary only for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 19:657 (May 1993), amended LR 28:856 (April 2002).

Richard L Stalder
Secretary

0204#074

## RULE

**Department of Public Safety and Correction**
**Office of Adult Services**

Adult Administrative Remedy Procedure
(LAC 22:I.325)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171 et seq., Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., has adopted the Adult Administrative Remedy Procedure. Prior LAC 22:I.325, Administrative Remedy Procedure, is now located at LAC 22:I.324.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter A. General**
**§325. Adult Administrative Remedy Procedures**

A. Administrative Remedy Procedure

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institution a formal grievance mechanism for use by all inmates committed to the custody of the Department. The process bears the name Administrative Remedy Procedure (ARP). Inmates are required to use the procedure before they can proceed with a suit in Federal and State Courts.

2. Inmates are encouraged to continue to seek solutions to their concerns through informal means, but in order to insure their right to use the formal procedure, they should make their request to the warden in writing within a 30 day period after an incident has occurred. If, after filing in the formal procedure an inmate receives a satisfactory response through informal means, the inmate may request (in writing) that the warden cancel his formal request for an administrative remedy.

3. All inmates may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

4. Original letters of request to the wardens should be as brief as possible. Inmates should present as many facts as possible to answer all questions (who, what, when, where, and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the inmate with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the warden's office.

5. Once an inmate's request procedure, he must use the manila envelope that is furnished to him with this First Step to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP Screening Officer.

B. Purpose. Corrections Services has established the Administrative Remedy Procedure through which an inmate may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes. Through this procedure, inmates shall receive reasonable responses and where appropriate, meaningful remedies.

C. Applicability. Inmates may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. There are procedures already in place within all DPS&C institutions which are specifically and expressly incorporated into and made a part of this Administrative Remedy Procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims. The following matters shall not be appealable through this Administrative Remedy Procedure:

1. court decisions and pending criminal matters over which the Department has no control or jurisdiction;

2. Pardon Board and Parole Board decisions (under Louisiana law, decisions of these boards are discretionary, and may not be challenged);

3. Louisiana Risk Review Panel recommendations;

4. Lockdown Review board decisions (inmates are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The board's decision may not be challenged. There are, however, two bases for request for administrative remedy on Lockdown Review Board hearings):

a. that no reasons were given for the decision of the board;

b. that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20-day grace period attached hereto, due to administrative scheduling problems of the Board; therefore, a claim based on this ground will not be valid until 110 days have passed and no hearing has been held. As used in this procedure, the following definitions shall apply.

D. Definitions

*ARP Screening Officer***C**a staff member, designated by the warden, whose responsibility is to coordinate and facilitate the Administrative Remedy Procedure process.

*Grievance***C**a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an inmate of an institution, or an incident occurring within an institution.

*Emergency Grievance***C**a matter in which disposition within the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate.

*Days***C**calendar days.

E. Policy. All inmates, regardless of their classification, impairment, or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for inmates with literacy deficiencies or language barriers. No action shall be taken against an inmate for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Inmates are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

1. Reviewers. If an inmate registers a complaint against a staff member, that employee shall not play a part in making a decision on the request. However, this shall not prevent the employee from participating at the step one level, since the employee complained about may be the best source from which to begin collecting information on an alleged incident. If the inmate is not satisfied with the decision rendered at the First Step, he should pursue his grievance to the Assistant Secretary of Adult Services via the Second Step.

2. Communications. Inmates must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers. The procedures shall be posted in writing in areas readily accessible to all inmates.

3. Written Responses. At each stage of decision and review, inmates will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

F. Procedure

1. Screening. The ARP Screening Officer will screen all requests prior to assignment to the First Step. The screening process should not unreasonably restrain the inmate's opportunity to seek a remedy.

a. If a request is rejected, it must be for one of the following reasons, which shall be noted on Form ARP.

i. This matter is not appealable through this process, such as:

(a). court decisions;

(b). Parole Board/Pardon Board decisions;

(c). Louisiana Risk Review Panel recommendations;

(d). Lockdown Review Board (refer to section on "Applicability" [Subsection C]).

ii. There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

(a). disciplinary matters;

(b). lost property claims.

iii. It is a duplicate request.

iv. In cases where a number of inmates have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the inmate who filed the initial request. Copies of the decision sent to other inmates who filed requests simultaneously regarding the same issue

will constitute a completed action. All such requests will be logged.

v. The complaint concerns an action not yet taken or a decision which has not yet been made.

vi. The inmate has requested a remedy for another inmate.

vii. The inmate has requested a remedy for more than one incident (a multiple complaint).

viii. Established rules and procedures were not followed.

ix. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied due to lack of cooperation.

x. There has been a time lapse of more than 30 days between the event and the initial request, unless waived by the warden.

b. Notice of the initial acceptance or rejection of the request will be furnished to the inmate.

2. Initiation of Process. Inmates should always try to resolve their problems within the institution informally, before initiating the formal process. This informal resolution may be accomplished through discussions with staff members, etc. If the inmate is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process.

a. The method by which this process is initiated is by a letter from the inmate to the warden. For purposes of this process, a letter is:

i. any form of written communication which contains this phrase: "This is a request for administrative remedy;" or

ii. Form ARP-1 at those institutions that wish to furnish forms for commencement of this process.

b. No request for administrative remedy shall be denied acceptance into the Administrative Remedy Procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase: "This is a request for administrative remedy."

c. Nothing in this procedure should serve to prevent or discourage an inmate from communicating with the warden or anyone else in the Department of Public Safety and Corrections. The requirements set forth in this document for acceptance into the Administrative Remedy Procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review. All forms of communication to the warden will be handled, investigated, and responded to as the warden deems appropriate.

d. If an inmate refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate Step Response and returning it to the inmate.

3. Multiple Requests. If an inmate submits multiple requests during the review of a previous request, they will be logged and set aside for handling at such time as the request currently in the system has been exhausted at the Second Step or until time limits to proceed from the First Step to the Second Step have lapsed. The warden may determine whether a letter of instruction to the inmate is in order.

4. Reprisals. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

a. The prohibition against reprisals should not be construed to prohibit discipline of inmates who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined under the appropriate rule violation described in the DPS&C "Disciplinary Rules and Procedures for Adult Inmate."

G. Process

1. First Step (Time Limit 40 days)

a. The inmate commences the process by writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to section on "Procedure **C** Initiation of Process" [Subsection F] for the requirements of the letter.) The inmate should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process, and will not be returned to the inmate. The institution is not responsible for furnishing the inmate with copies of his letter of complaint. This letter should be written to the warden within 30 days of an alleged event. (This requirement may be waived when circumstances warrant. The warden, or his designee, will use reasonable judgment in such matters.) The requests shall be screened by the ARP Screening Officer and a notice will be sent to the inmate advising that his request is being processed or is being rejected. The warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The warden shall respond to the inmate within 40 days from the date the request is received at the First Step.

b. For inmates wishing to continue to the Second Step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. There is no need to rewrite the original letter of request as it will be available to all reviewers at each Step of the process.

2. Second Step (Time Limit 45 days)

a. An inmate who is dissatisfied with the First Step response may appeal to the Secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP Screening Officer within 5 days of receipt of the decision. A final decision will be made by the Secretary and the inmate will be notified within 45 days of receipt. A copy of the Secretary's decision will be sent to the warden.

b. If an inmate is not satisfied with the Second Step response, he may file suit in District Court. The inmate must furnish the administrative remedy procedure number on the court forms.

3. Monetary Damages

a. Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an inmate, may determine that such an inmate is entitled to monetary damages where monetary damages are deemed by the Department as appropriate to render a fair and just remedy.

b. Upon a determination that monetary damages should be awarded, the remaining question is quantum, or the determination as to the dollar amount of the monetary damages to be awarded. The matter of determining quantum

shall be transferred to the Office of Risk Management of the Division of Administration which shall then have the discretionary power to determine quantum. The determination reached by the Office of Risk Management shall be returned to the Department of Public Safety and Corrections for a final decision. If a settlement is reached, a copy of the signed release shall be given to the warden on that same date.

4. Deadlines and Time Limits

a. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the inmate to move on to the next Step in the process. Time limits begin on the date the request is assigned to a staff member for the First Step response.

b. An inmate may request an extension in writing of up to five days in which to file at stage of the process. This request shall be made to the ARP Screening Officer for an extension to initiate a request; to the warden for the First Step and to the Assistant Secretary of Adult Services for the Second Step. The inmate must certify valid reasons for the delay, which reasons must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each Step, along with the substantive issue of the complaint.

c. The warden may request permission for an extension of not more than five days from the Assistant Secretary of Adult Services for the step one review/response. The inmate must be notified in writing of such an extension.

d. In no case may the cumulative extensions exceed 25 days.

5. Problems of an Emergency Nature

a. If an inmate feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request and forward the request to the level at which corrective action can be taken. All emergency requests shall be documented on an Unusual Occurrence Report.

b. Abuse of the emergency review process by an inmate shall be treated as a frivolous or malicious request and the inmate shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

6. Sensitive Issues

a. If the inmate believes the complaint is sensitive and would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the Assistant Secretary of Adult Services (Second Step level). The inmate must explain, in writing, his reason for not filing the complaint at the institution.

b. If the Assistant Secretary of Adult Services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the inmate in writing, and return the complaint to the warden's office. The inmate shall then have five days from the date the rejection memo is received in the warden's office to submit his request through regular channels (beginning with the First Step if his complaint is acceptable for processing in the Administrative Remedy Procedure).

7. Records

a. Administrative Remedy Procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

b. All reports, investigations, etc., other than the inmate's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling the anticipated eventual litigation of this matter and are therefore confidential and not subject to discovery.

c. Records will be maintained as follows.

i. A computerized log will be maintained which will document the nature of each request, all relevant dates, and disposition at each step. Each institution will submit reports on Administrative Remedy Procedure activity in accordance with Department Regulation No. C-05-001 "Activity Reports/Unusual Occurrence Reports-Operations Units-Adult."

ii. Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at Headquarters.

iii. Records shall be kept at least three years following final disposition of the request.

8. Transferred Inmates. When an inmate has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through the First Step. The warden of the receiving institution will assist in communication with the inmate.

9. Discharged Inmates. If an inmate is discharged before the review of an issue that affects the inmate after discharge is completed, or if he files a request after discharge on such an issue, the institution will complete the processing and will notify the inmate at his last known address. All other requests shall be considered moot when the inmate discharges, and shall not complete the process.

10. Annual Review. The warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the Administrative Remedy Procedure from inmates and staff. A report with the results of such review shall be provided to the Assistant Secretary of Adult Services.

H. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure. All ARP requests filed prior to the effective dated will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I. 325, Administrative Remedy Procedure.

I. Request for Administrative Remedy Form (ARP-1)

ARP-1

ADMINSTRATIVE REMEDY PROCEDURE
THIS IS A REQUEST FOR ADMINISTRATIVE REMEDY

_____ _____
Inmate's Name DOC # Date of Incident/Complaint

_____
Place and Time of Incident/Complaint

Describe Nature of Complaint (i.e. WHO, WHAT, WHEN, WHERE, and HOW)

_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Inmate's Signature DOC # Date

_____

TO:_____
Inmate's Name and DOC #

( ) ACCEPTED: Please respond to the inmate within 40 days.
( ) REJECTED: Your request has been rejected for the following reason:

_____

_____
_____
_____
_____
Date ARP Screening Officer

J. First Step Response Form (ARP-2)

ARP-2

ADMINISTRATIVE REMEDY PROCEDURE
FIRST STEP RESPONSE FORM

TO: _____
Inmate's Name DOC # Living Unit

FROM: _____
_____
_____
First Step Respondent Title

Response to Request Dated_____ Received by Inmate_____
Instructions to Inmate: If you are not satisfied with this response, you may go to Step Two by checking below and forwarding to the ARP Screening Officer within 5 days of your receipt of this decision.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

( ) I am not satisfied with this response and wish to proceed to Step Two.
REASON:

_____
_____

_____ _____ _____
Date Inmate's Signature DOC #

K. Second Response Form (ARP-3)

ARP-3

ADMINISTRATIVE REMEDY PROCEDURE
SECOND STEP RESPONSE FORM

TO: _____
Inmate's Name DOC # Living Unit

Response to Request Dated_____, Received in this office on _____

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Date Secretary

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:857 (April 2002).

Richard Stalder
Secretary

0204#075

**RULE**

**Department of Public Safety and Correction**
**Office of Adult Services**

Juvenile Administrative Remedy Procedure
(LAC 22:I.326)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:1171, et seq. Corrections Administrative Remedy Procedure, and Administrative Procedures Act, R.S. 49:950 et seq., has adopted a Juvenile Administrative Remedy Procedure.

**Title 22**
**CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**
**Part I. Corrections**
**Chapter 3. Adult and Juvenile Services**
**Subchapter A. General**
**§326. Juvenile Administrative Remedy Procedure**

A. Purpose. The purpose of this regulation is to establish an administrative remedy procedure specific to juvenile offenders through which an offender may seek formal review of a complaint which relates to most aspects of his stay in secure care if less formal procedures have not resolved the matter.

B. Applicability. Assistant secretary/Office of Youth Development, wardens, Youth Programs Compliance Division staff and employees and offenders of each juvenile institution.

C. Definitions

*ARP Coordinator***C**a staff member designated by the Warden whose responsibility is to coordinate and facilitate the ARP process.

*Business Days***C**Monday through Friday.

*Calendar Days***C**consecutive days including weekends and holidays.

*Case Manager***C**a staff member whose primary responsibilities include a assisting offenders.

*Emergency Grievance***C**a matter in which disposition within the regular time limits would subject the offender or others to substantial risk of personal injury, or cause other serious or irreparable harm.

*Grievance***C**a written complaint on an offender's behalf regarding a policy, condition, action, or incident occurring within an institution that affects the offender personally.

*Initiation of the ARP Process***C**for a particular complaint, the administrative remedy procedure shall commence the day the request is accepted in the ARP process.

*Offender***C**a person incarcerated in a juvenile correctional institution.

*Youth Programs Compliance Division (YPCD)***C**a division located at the Office of Youth Development Headquarters in Baton Rouge. Employees of this division are responsible for monitoring the ARP process.

*Sensitive Issue***C**a complaint which the offender believes would adversely affect him if it became known at the institution.

D. Policy

1. The administrative remedy procedure for juveniles has been established for offenders to seek formal review of a complaint which relates to most aspects of their incarceration. Such complaints and grievances include, but are not limited to, any and all claims seeking monetary, injunctive, declaratory, or any other relief authorized by law. By way of illustration, this includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, lost personal property, denial of publications, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

2. Offenders may request administrative remedies to situations arising from policies, conditions, or events within the institution that affect them personally. Disciplinary reports are not grievable and must be handled through the disciplinary appeal system. Court decisions and pending criminal and adjudication matters over which the Department has no control or jurisdiction shall not be appealable through this administrative remedy procedure.

3. All offenders, regardless of their classification, impairment or handicap, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through this grievance procedure, a complaint that a reprisal occurred.

4. All offenders may request information and obtain assistance in using the administrative remedy procedure from his case manager, counselor, or other staff member. Nothing in this administrative remedy procedure will serve to prevent or discourage an offender from communicating with the warden or anyone else in the Department.

E. General Procedures

1. Dissemination. New employees and incoming offenders must be made aware of the administrative remedy procedure in writing and by oral explanation at orientation and have the opportunity to ask questions and receive oral answers. A simplified version of the administrative remedy procedure will be provided in booklet form to the offenders during the orientation process. This version of the procedure shall also be posted in areas readily accessible to all employees and offenders.

2. Informal Resolution. Offenders are encouraged to resolve their problems within the institution informally, before initiating the formal ARP process. This informal resolution may be sought by talking to his case manager, counselor, or other staff member. An attempt at informal resolution does not affect the timeframe for filing an ARP; therefore, the offender and staff member assisting with informal resolution must be alert to the 30 calendar day filing timeframe so that the opportunity to file an ARP is not missed when it appears that the situation will not be informally resolved before the expiration of the filing period.

3. Initiation of ARP

a. An ARP is initiated by completing the first part of the Juvenile ARP Form (see Subsection N). No request for ARP shall be denied acceptance because it is not on a form; however, all requests must contain a statement or phrase to the effect: "This is a request for administrative remedy"; "This is a request for ARP"; or "ARP." Upon receipt by the ARP Coordinator, any such request will be attached to an ARP form.

b. The offender has 30 calendar days after the incident occurred in which to file a complaint. The ARP is considered "filed" upon receipt by the ARP Coordinator or designee. This includes those ARPs placed in the ARP or grievance box over the weekend or on a legal holiday. The ARP forms shall be available at designated sites at each institution and from case managers.

c. The offender shall complete the first part of the form outlining the problem and remedy requested. His case manager, counselor, or other staff member will be available for assistance in completing the form at each stage of the process.

d. If additional space is needed for completing any part of the form, another page of paper may be used and attached to the original form. The offender must give the completed, original form to his case manager or place it in the designated collection site to be picked by the ARP Coordinator.

e. Offenders released from secure care prior to filing their ARP should send the ARP directly to the ARP Coordinator. The ARP must be postmarked within 30 days or received within the 30 calendar day timeframe, if not mailed.

4. Screening of Requests. The ARP Coordinator will screen all requests prior to the step one review/response. If the same complaint is received from different offenders, each must be reviewed as an individual complaint. If the

ARP is rejected, the reason(s) for rejection shall be noted on the Juvenile ARP Form. Copies of ARP acceptances, rejections, etc. will be maintained by the ARP Coordinator. The Youth Programs Compliance Division will be copied on all rejections. A request may be rejected for one or more of the following reasons (See Part 10, "Judicial Review," for consequences of rejection).

a. The complaint pertains to a disciplinary matter, court decision or a judge's order in the offender's case.

b. The complaint concerns an action not yet taken or decision which has not yet been made.

c. There has been a time lapse of more than 30 calendar days between the event and receipt of the initial request.

d. The date of the event is not on the form. In this case, the form will be returned to the offender to have the correct date noted, however, the original 30 day time limit will still apply.

e. The offender has requested an administrative remedy for another offender.

f. A request is unclear. If this occurs, the request may be rejected and returned to the offender with a request for clarity. The deadline for this request will begin on the date the re-submission is received by the ARP Coordinator (within five calendar days in a secure facility and 10 calendar days if the offender has been released).

g. An offender refuses to cooperate with the inquiry into his allegation. If this occurs, the request may be rejected by noting the lack of cooperation on the Juvenile ARP Form and returning it to the offender.

h. The request is a duplicate of a previous request submitted by the same offender.

i. The request contains several unrelated complaints. Normally, an offender should not include more than one complaint in a single ARP. The ARP Coordinator has the discretion to accept or reject the ARP if it contains several unrelated complaints.

5. Reprisals. No action shall be taken against any offender for the good faith use of or good faith participation in the ARP. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are, as determined by the ARP Coordinator, frivolous or deliberately malicious may be disciplined under the appropriate rule violation contained in the "Disciplinary Rules and Procedures for Juvenile Offenders."

F. Step One (Maximum Time Limit–21 Calendar Days). ARP Coordinator's Review and warden's Response

1. The offender will begin the process by completing the first part of a Juvenile ARP Form, which will briefly set out the basis for the claim, and the relief sought. The form must be submitted within 30 calendar days of the incident which caused the aggrievement. The 30-day requirement may be waived by the warden when circumstances warrant, i.e. if the offender is ill for an extended period of time or if a significant, unusual event affects the offender's ability to file the ARP. The offender may also request a five calendar day extension from the ARP Coordinator if additional time is needed to prepare the ARP.

2. The original Juvenile ARP Form submitted by the offender will become part of the process, and will not be returned to the offender until the warden's response (Step One) has been finalized.

3. ARPs shall be screened and logged by the ARP Coordinator. If appropriate for handling, the ARP Coordinator or fact-finding person assigned by the ARP Coordinator will begin fact-finding, including communication with the various program managers for program specific complaints, if needed. The ARP Coordinator will send notice to the offender via a copy of the Juvenile ARP Form regarding the status (acceptance/rejection) of the request. The warden should be kept appraised of the status of the ARP throughout the process.

4. ARPs filed by an attorney must include proof of representation in the form of a signed pleading, a letter signed by the offender's parent or guardian advising of the retention of the attorney or some other legal authorization for the attorney's representation. The ARP Coordinator or fact-finding person cannot interview the offender without contacting the attorney to give the attorney an opportunity to be present during the ARP Coordinator/fact-finding person's interview with the offender. The offender may not be interviewed without the attorney (unless the attorney waives his presence) for a minimum of two business days after the staff's contact with the attorney. If the attorney cannot be available within this timeframe, the ARP process will proceed as usual. If no proof of representation is attached to the ARP, the 48-hour waiting period is not required.

5. If the offender advises the ARP Coordinator or fact-finding person during the investigation that he has spoken with an attorney about the ARP, the interview must cease. The ARP Coordinator or fact-finding person will obtain the attorney's name and telephone number from the offender and contact the attorney following the procedures described in the preceding paragraph.

6. The ARP Coordinator will submit the ARP, supporting documentation and recommendation to the warden for final step one action, which must be completed within 21 calendar days of receipt of the ARP by the ARP Coordinator. Emergency and medical, safety or abuse-related requests should be handled expeditiously. Abuse-related requests should also be copied to the Project Zero Tolerance Investigators for verification that an investigation has been or is being conducted (if appropriate to the circumstances.)

7. The warden may return the Juvenile ARP Form to the ARP Coordinator for additional information or further review prior to rendering the response

8. Once the warden's response has been entered onto the original Juvenile ARP Form, the form will be returned to the ARP Coordinator. The ARP Coordinator will log and forward the original to the offender, keep a copy for the ARP file and send a copy to the appropriate section of the institution, if applicable. Copies of documents gathered in preparation of the review and response to the grievance will be maintained in the ARP file.

9. Unless the offender appeals to step two, no further action is needed at this level.

G. Step Two (Maximum Time Limit–21 Calendar Days). Secretary's Response

1. An offender who is dissatisfied with the step one decision may appeal to the Secretary. Within 10 days of

receipt of the step one decision, the offender must complete the next part of the original ARP noting the request for the step two review and provide it to his case manager or place it in the designated collection site for the ARP Coordinator to pick up. His case manager or other staff member will be available to assist as needed with filing the appeal.

2. The ARP Coordinator will retain a copy for the ARP file, log and mail the original form along with copies of any supporting documentation directly to the Secretary or his designee. For the purpose of the step two response, this authority has been delegated by the Secretary to the Assistant Secretary of the Office of Youth Development (OYD).

3. A final decision will be made by the Assistant Secretary/OYD and the offender will be notified of the decision by mail (copy of the ARP form) postmarked within 21 calendar days of the Assistant Secretary's receipt of the appeal. The Assistant Secretary/OYD will retain a copy of the ARP and return the original to the ARP Coordinator. The ARP Coordinator will copy the decision to the warden, offender's attorney (if ARP was filed by the attorney), and to the ARP file. The ARP Coordinator will also insure theoriginal response is sent to the offender and obtain the offender's signed acknowledgment of receipt.

H. Judicial Review.

1. If an offender's ARP is rejected or if he is not satisfied with the step two response, he may seek judicial review of the decision pursuant to R.S. 15:1177 et seq. within 30 calendar days after receipt and signing acknowledgment of receipt of the decision.

2. In these cases, the ARP Coordinator will notify the offender's parents or guardian and attorney (if applicable), in writing, that the departmental grievance procedure has been exhausted.

I. Timeframes and Extensions

1. An offender may make a written request to the ARP Coordinator for an extension of up to five calendar days in which to initiate an ARP. He may make a written request to the warden for an extension of up to five calendar days in which to appeal to the Secretary. (This does not limit the warden's discretion under Section 8.A. to grant any filing timeframe waiver that he deems appropriate.) The warden must certify valid reasons for the delay.

2. The warden may make a written request to the Assistant Secretary/OYD for an extension of up to seven calendar days for the step one review/response. The offender must be notified in writing of such an extension. The Assistant Secretary/OYD may extend time needed for his response when such is deemed necessary. However, in no case may the cumulative extensions exceed 30 calendar days. This does not include waivers granted by the warden due to the offender's illness or other significant, unusual events.

3. Unless an extension has been granted, no more that 42 calendar days shall elapse from the ARP coordinator's receipt of the ARP to completion of the step two process. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process.

J. Sensitive Issues

1. If the offender believes his complaint is sensitive and he would be adversely affected if it became known at the institution, he may file the complaint directly with the Assistant Secretary/OYD. The offender must explain, in writing, the reason for not filing the complaint at the institution.

2. If the Assistant Secretary/OYD agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint. When this occurs, the Assistant Secretary/OYD shall also send a copy of this communication to the warden and to the ARP Coordinator. The ARP Coordinator will insure that the decision is delivered to the offender and obtain the offender's signature acknowledging receipt.

3. The offender shall then have the normal 30 calendar day deadline from the date the incident occurred or seven calendar days from the date he receives the rejection (whichever is longer) to submit his request through regular channels beginning with step one.

K. ARPs Related to Lost Property Claims

1. Under no circumstances may an offender be compensated for unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to, or gambling with other offenders. If the loss of personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed as described below.

2. If a state-issue item is available, the offender will be offered such as replacement for the lost personal property. If a state-issue replacement is not available, the warden or his designee will determine a reasonable value for the lost personal property. The maximum liability is $50. Regardless of whether the ARP results in a monetary or non-monetary replacement, the Lost Property Agreement form (see Subsection O) will be completed and submitted to the offender for his signature. ARPs (with Lost Property Agreement forms attached) resulting in monetary settlements will be forwarded to the Assistant Secretary/OYD for review and processing. These ARPs must include a cover letter advising that the ARP is for settling a lost property claim.

3. The ARP will be processed in accordance with the established timeframes and guidelines except that the response will not be delayed pending the processing of the monetary award by the Assistant Secretary/OYD.

L. Miscellaneous

1. Records. Administrative remedy procedure records are confidential and release of these records is governed by R.S. 15:574.12 and Ch.C. Art. 412. Records shall be kept at least three years following final disposition of the request. The Assistant Secretary/OYD shall formulate a procedure for orderly disposal of these records. The following records must be maintained. The institution may retain other records as deemed appropriate.

a. A database (on computer) will be maintained by the ARP Coordinator which will document the nature of each request, all relevant dates, recommendations and dispositions of Steps One and Two.

b. Each institution will submit reports on ARP activity in accordance with Department Regulation No. C-05-001-J.

c. Individual ARPs and dispositions, and all responses and pertinent documents shall be kept on file at the ARP Coordinator's office.

2. Transferred Offenders. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution will complete the processing through step one. The warden of the receiving institution will assist in communication with the offender.

3. Discharged Offenders. If an offender is discharged before the review of an ARP, or if he files an ARP after discharge, the institution will complete the processing and will notify the offender at his last known address. (The 30 calendar day timeframe in which to file an ARP applies regardless of whether the offender has been discharged from secure care.)

4. Monetary Damages. Based upon credible facts within an ARP, the Assistant Secretary/OYD may find cause to believe that monetary damages are a fair and just remedy. The Assistant Secretary/OYD shall consult with the Secretary and the Legal Section of the Department to determine if monetary damages are appropriate. Upon finding that monetary damages should be awarded, a dollar amount of the monetary damages to be awarded must be determined. This matter shall be referred to the Office of Risk Management (ORM) of the Division of Administration. If a settlement is reached, a copy of the signed release shall be given/faxed to the appropriate institution.

5. Annual Review. The warden shall annually solicit comments and suggestions from offenders and staff regarding the handling of requests, the efficiency and the credibility of the administrative remedy procedure and report the results of such review to the Assistant Secretary/OYD and the Director of YPCD.

M. Effective Date. Only ARP requests filed on or after the effective date of this Regulation, as adopted pursuant to the Administrative Procedures Act, shall be governed by this procedure and all ARP requests filed prior to the effective date will be administered in accordance with the provisions of LAC 22:I.324, formerly LAC 22:I.325, Administrative Remedy Procedure. All juvenile lost property claims filed prior to the effective date of this rule will be administered in accordance with LAC 22:I.389. All juveniles lost property claims filed after the effective date of this rule shall be governed by this procedure only.

N. Juvenile ARP Form

DPS&C - CORRECTIONS SERVICES Number: _____-_____-____
JUVENILE ARP FORM Date Received:_____
Name: _____ JIRMS Number:_____
Institution: _____ Housing Unit:_____

"THIS IS A REQUEST FOR ARP"

(You may ask your case manager or other staff members for help completing this form.)
State your problem (WHO, WHAT, WHEN, WHERE AND HOW) and the remedy requested (what you want to solve the problem):

Problem: _____
_____
_____
_____

Remedy requested: _____
Date of Incident:_____ Today's Date:_____

This form must be completed within 30 calendar days of the date of the incident and given to the ARP Coordinator or placed in the ARP/grievance box.

**Step One–ARP Coordinator's Review and Warden's Response**

(Maximum Time For Processing: 21 calendar days)

_____ Denied _____Rejected _____Returned _____ Accepted Date: _____
Reason: _____
_____ Handled Informally By _____

AC's Recommendation:

Sent to Warden on: _____AC's Signature: _____
Warden's response to your ARP Step One request: _____
_____
_____
_____

Date: _____ Warden's Signature: _____

If you are not satisfied with this response, you may go to Step Two. The ARP Coordinator must submit your request to the Secretary within 10 calendar days after you receive the Step One response.

Received Step One on: _____ Juvenile's Signature: _____
Request Step Two: __yes ___no Reason for Step Two request: _____
_____

Date Step Two request received by AC: ____ Date Sent to Secretary: _____
AC's Signature: _____

**Step Two - Secretary's Response**

(Maximum Time For Processing: 21 calendar days)

Date Received:
Secretary's response to ARP Step Two request: _____
_____
_____
_____

Date: _____ _____
Secretary's Signature

Date received Secretary's response:_____ _____
Juvenile's Signature

If you are not satisfied with this response, you may seek judicial review. A request for judicial review must be submitted to the court within 30 calendar days after receiving the Step Two decision.

O. Lost Property Agreement

Rev. 01-01-02

**LOST PROPERTY AGREEMENT**

I, _____(Offender name), JIRMS # _____, filed an ARP for _____(description of lost property.) My ARP was filed on _____. I have received _____as a settlement for my lost property. Since I have received a settlement for my lost property, the State of Louisiana (Department of Public Safety and Corrections [DPS&C]) does not owe me anything for my property which was reported lost on _____(Date ARP filed.) I agree to release the State of Louisiana (DPS&C) and any of its agents, representatives, officers and employees from any liability for compensation, damages and any other amounts that may be owed to me because my property was lost. I also agree to discharge the State of Louisiana of any liability that may exist. I agree to all the terms of this agreement.

WITNESSES:

_____ _____
(Signature of Offender)

_____ _____
(Date)

Warden's Approval _____
Secretary's Approval

(Necessary for monetary settlement)

AUTHORITY NOTE: Promulgated in accordance with R.S. 1171, et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:861 (April 2002).

Richard Stalder
Secretary

0204#076

**RULE**

**Department of Revenue**
**Policy Services Division**

Certain Imported Cigarettes
(LAC 61:I.5101)

The Department of Revenue, in accordance with the provisions of R.S. 13:5062(10), R.S. 47:1511, and the Administrative Procedure Act, R.S. 49:951 et seq., has adopted this rule. The rule is needed to establish procedures for obtaining information for the enforcement of the conditions of the Master Settlement Agreement.

This rule establishes the manner by which the information is to be provided and addresses penalties that may be imposed on registered tobacco dealers who fail to comply.

**Title 61**
**DEPARTMENT OF REVENUE**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 51. Tobacco Tax**
**§5101. Reporting of Certain Imported Cigarettes; Penalty**

A. Every registered wholesale tobacco dealer receiving cigarettes or roll-your-own tobacco made by a tobacco product manufacturer who is not participating in the Master Settlement Agreement, whether the product is purchased directly from the manufacturer or through a distributor, retailer or similar intermediary or intermediaries, must furnish the following information:

1. invoice number;
2. manufacturer's name and complete address;
3. quantity of product obtained, i.e. number of cigarettes or ounces of roll-your-own tobacco as defined at R.S. 13:5062(4);
4. product brand name;
5. whether the product was shipped directly from the manufacturer;
6. name and address of the seller if other than the manufacturer; and
7. any other information that may be requested by the secretary.

B. The information required by Subsection A is to be provided on a form prescribed by the secretary and must be submitted with and at the same time as the monthly tobacco report. If, during the reporting period, there were no purchases of a product made by a manufacturer who is not participating in the Master Settlement Agreement, such is to be indicated on the prescribed form and the form attached to the monthly tobacco report.

C. Any registered wholesale tobacco dealer who fails to comply with the reporting requirement or provides false or misleading information in response to Subsection A may be subject to the revocation or suspension of any permit issued under R.S. 47:844, in accordance with R.S. 47:844 (A)(4).

D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall not be suspended. Upon a third instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to show cause, on a date and time set by the secretary, as to why the wholesale dealer's permit shall not be suspended. If the wholesale dealer does not comply with the terms of this rule after the hearing, the secretary shall suspend the wholesale dealer's permit for a period of at least 30 days, or until such time as the dealer has become compliant. Failure to properly respond to written notification of noncompliance shall constitute a subsequent instance of noncompliance.

E. The information furnished under Subsection A may be disclosed as provided in R.S. 47:1508 (B)(11).

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5062 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Policy Services Division, LR 28:866 (April 2002).

Cynthia Bridges
Secretary

0204#019

**RULE**

**Department of Revenue**
**Policy Services Division**

Electronic Funds Transfer
(LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue has amended LAC 61:I.4910 pertaining to the electronic transfer of funds in payment of various taxes due the state of Louisiana.

These amendments reflect procedural changes in the processing of taxpayers who are required to make electronic transfer of funds in payment of taxes, fees, and other amounts due to be paid to the Department of Revenue. The Department is updating the rule for these changes and to further clarify the requirements associated with electronic funds transfers.

**Title 61**
**DEPARTMENT OF REVENUE**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 49. Tax Collection**
**§4910. Electronic Funds Transfer**

A. Electronic Funds Transfer Requirements

1. Taxpayers are required to remit their respective tax or taxes electronically or by other immediately investible funds as described in R.S. 47:1519 if any of the following criteria are met:

a. the payments made in connection with the filing of any business tax return or report averaged, during the prior 12-month period, $20,000 or more per reporting period; or

b. any business tax return or report is filed more frequently than monthly and the average total payments during the prior 12-month period exceed $20,000 per month; or

c. any company who files withholding tax returns and payments on behalf of other taxpayers and payments during the previous 12-month period averaged $20,000 or more per month for all tax returns filed.

2. Any taxpayer whose tax payments for a particular tax averages less than $20,000 per payment may voluntarily remit amounts due by electronic funds transfer with the approval of the secretary. After requesting to electronically transfer tax payments, the taxpayer must continue to do so for a period of at least 12 months.

B. Definitions. For the purposes of this Section, the following terms are defined.

*Automated Clearinghouse Credit*–an automated clearinghouse transaction in which taxpayers through their own banks, originate an entry crediting the state's bank account and debiting their own bank account. Banking costs incurred for the automated clearinghouse credit transaction shall be paid by the person originating the credit.

*Automated Clearinghouse Debit*–an automated clearinghouse transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

*Business Tax*–any tax, except for individual income tax, collected by the Department of Revenue.

*Electronic Funds Transfer*–any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit or automated clearinghouse credit. Federal Reserve Wire Transfers (FedWire) may be used only in emergency situations and with prior approval from the department.

*FedWire Transfer*–any transaction originated by taxpayers utilizing the national electronic payment system to transfer funds through the Federal Reserve banks, when the taxpayers debit their own bank accounts and credit the state's bank account. Electronic funds transfers may be made by FedWire only if payment cannot, for good cause, be made by automated clearinghouse debit or credit and the use of FedWire has the prior approval of the department. Banking costs incurred for the FedWire transaction shall be paid by the person originating the transaction.

*Other Immediately Investible Funds*–cash, money orders, bank draft, certified check, teller's check, and cashier's checks.

*Payment*–any amount paid to the Department of Revenue representing a tax, fee, interest, penalty, or other amount.

C. Taxes Required to be Electronically Transferred. Tax payments required to be electronically transferred may include corporation income and franchise taxes including declaration payments; income tax withholding; sales and use taxes; severance taxes; excise taxes; and any other tax or fee administered or collected by the Department of Revenue. A separate transfer shall be made for each return.

D. Taxpayer Notification

1. Those taxpayers required to electronically transfer tax payments will be notified in writing by the department of the electronic funds transfer data format and procedures at least 90 days prior to the required electronic funds transfer effective date. The taxpayer will be given payment method options (ACH debit, ACH credit, or other immediately investible funds) from which to select. Depending on the method selected, the taxpayer will be required to submit specific information needed to process electronic payments. Before using ACH debit, the taxpayer must register at least 60 days in advance. Once required to remit taxes by electronic funds transfer, the taxpayer must continue to do so until notified otherwise by the department.

2. After one year, taxpayers whose average payments have decreased below the threshold may request to be relieved of the electronic funds transfer requirement.

3. Taxpayers experiencing a change in business operations that results in the average payments not meeting the requirements, may request to be relieved of the electronic funds transfer requirement. "Change in business operations" shall include changing of pay services for the purpose of filing income tax withholding.

E. Failure to Timely Transfer Electronically

1. Remittances transmitted electronically are considered paid on the date that the remittance is added to the state's bank account. Failure to make payment or remittance in immediately available funds in a timely manner, or failure to provide such evidence of payment or remittance in a timely manner, shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law for delinquent or deficient tax, fee or obligation payments. If payment is timely made in other than immediately available funds, penalty, interest, and loss of applicable discount shall be added to the amount due from the due date of the tax, fee or obligation payment to the date that funds from the tax, fee, or obligation payment subsequently becomes available to the state.

2. When the statutory filing deadline, without regard to extensions, falls on a Saturday, Sunday, or Federal Reserve holiday, the payments must be electronically transferred in order to be received by the next business day. Transfer must be initiated no later than the last business day prior to the filing deadline. Deadlines for initiating the transfer for ACH credits are determined by the taxpayer's financial institution. Deadlines for ACH debits are established by the payment processor and specified in instructions provided by the department.

3. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519 and this rule, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

4. Except for the withholding tax return, Form L-1, the filing of a tax return or report is to be made separately from the electronic transmission of the remittance. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

5. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), LR 28:866 (April 2002).

Cynthia Bridges
Secretary

0204#020

## RULE

**Department of Revenue**
**Policy Services Division**

Partnership Composite Returns and Payments
(LAC 61:I.1401)

Under the authority of R.S. 47:201.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

**Title 61**
**REVENUE AND TAXATION**
**Part I. Taxes Collected and Administered by the Secretary of Revenue**
**Chapter 14. Income: Partnerships**
**§1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions**

A. Definitions. For the purpose of this rule, the following terms are defined.

*Corporation***C**an entity that is treated as a corporation for state income tax purposes as set forth in R.S. 47:287.11(A).

*Engaging in Activities in this State***C**having payroll, sales, or tangible property in this state, or intangible property with a Louisiana business situs.

*Individual Return***C**a Louisiana personal income tax return or a Louisiana fiduciary income tax return.

*Nonresident***C**any person not domiciled, residing in, or having a permanent place of abode in Louisiana.

*Partner***C**a member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest; therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

*Partnership***C**any association that is treated as a partnership for state income tax purposes including, but not limited to, a general partnership, partnership in commendam, a registered limited liability partnership, or a limited liability company. Because of R.S. 47:287.11(A), the above listed business associations that do not elect to be taxed as corporations for federal income tax purposes are treated as partnerships for Louisiana income tax purposes.

B. Persons to be Included in a Composite Return

1. Partnerships engaging in activities in this state that have nonresident partners are required to file a composite partnership return unless:

a. all nonresident partners are corporations or tax exempt trusts; or

b. all nonresident partners, other than corporations and tax exempt trusts, have a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. Unless otherwise provided herein, corporate partners cannot be included in composite returns filed by a partnership. Corporate partners must file all applicable Louisiana tax returns, and must report all Louisiana source income, including income from the partnership in those returns.

3. Resident partners, other than corporations and tax-exempt trusts, may be included in a composite return.

4. A partnership that is a partner must be included in the composite return, unless that partner files an agreement with the partnership agreeing to file a composite return that reflects the Louisiana source income from the partnership of which it is a partner.

C. Composite Return Requirements

1. All nonresident partners, other than partners that are corporations or tax-exempt trusts, who were partners at any time during the taxable year and who do not have a valid agreement on file with the Department of Revenue must be included in the composite partnership return.

2. The due date of the composite return is the due date set forth for all income tax returns other than corporate returns.

3. A schedule must be attached to the composite return that includes the following information for every nonresident partner in the partnership:

a. the name of the partner;
b. the address of the partner;
c. the taxpayer identification number of the partner;
d. the partner's distributive share; and
e. whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

4. If a resident partner is included in the partnership's composite return, a schedule must be attached to the composite return that includes the following information for every resident partner included in the partnership composite return:

a. the name of the partner;
b. the address of the partner;
c. the taxpayer identification number of the partner;

d. the partner's distributive share.

5. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner properly included in the composite return from the duty to file an individual return, provided that the nonresident partner does not have any income from Louisiana sources other than that income reported in the composite return. Inclusion in a partnership composite return shall not relieve a resident partner of the obligation to file a Louisiana income tax return.

6. Filing requirement the first year the partnership is subject to the composite return rules and issuance of special identification number. Every partnership that engages in activities in this state and that has nonresident partners will make an initial filing with the department.

a. Each partnership that is required to file a composite return will file its first composite return and make its first composite payment by the composite return due date. The partnership will be issued an identification number by the department upon its initial filing. This identification number shall be used on all partnership correspondence with the department, including subsequent composite returns filed by that partnership.

b. Each partnership that is not required to file a composite return because all its partners have filed agreements to file on their own behalf, must make an initial filing in which it files all agreements with the department of Revenue by the composite return due date. The partnership will be issued an identification number by the department upon its initial filing. This identification number shall be used on all partnership correspondence with the department, including the filing of additional agreements.

D. Composite Payment Requirement

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations or tax-exempt trusts shall make composite payments on behalf of all of their nonresident partners, other than corporate partners, who do not file an agreement to file an individual return and pay Louisiana income tax.

2. The composite payment is due on the earlier of the date of filing of the composite return or the due date of the composite return, without regard to extensions of time to file. An extension of time to file the composite return does not extend the time to pay the composite payment.

3. Each partner's share of the composite payment is the maximum tax rate for individuals multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. The composite payment to be made by the partnership is the sum of each partner's share of the composite payment for all partners included in the composite return.

5. For a nonresident partner whose only Louisiana income is from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a payment of that partner's Louisiana individual income tax liability.

6. If a partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as an advance payment of the tax liability shown on that partner's individually filed return.

E. Nonresident Partner's Agreement to File an Individual Return

1. No composite return or composite payment is required from a partnership on behalf of a partner who has a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. The partner will execute the agreement and transmit the agreement to the partnership, on or before the last day of the month following the close of the partnership's taxable year.

3. The partnership will file the original agreement with the composite return filed for that taxable year. The partnership must keep a copy of the agreement on file.

4. The agreement must be in writing, in the form of an affidavit and must include all of the following:

a. a statement that the taxpayer is a nonresident partner or member;

b. the partner's name;

c. the partner's address;

d. the partner's social security number or taxpayer identification number;

e. the name of the partnership;

f. the address of the partnership;

g. the partnership's federal taxpayer identification number;

h. a statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;

i. a statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;

j. the statement that "under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;" and

k. the signature of the partner.

5. Once an agreement is signed by the partner, transmitted to the partnership, and the partnership has filed the agreement with the Department of Revenue, the agreement will continue in effect until the partner or the Department of Revenue revokes the agreement, or the partner is no longer a partner in the partnership.

6. The agreement may be revoked by either the partner or the Department of Revenue as follows.

a. The partner may revoke the agreement at will. However, this revocation does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The partner must send written notice of the revocation to the partnership. The partnership will forward the notice to the Department of Revenue. The partner may execute a new agreement, in the manner set forth in this Subsection, at any time.

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective

until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The Department of Revenue must send written notice of the revocation to the partner and the partnership. The notice will be mailed to the partnership at the address given in the last return or report filed by the partnership. The notice will be mailed to the partner at the address provided in the agreement. If the Department of Revenue revokes an agreement, the department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

F. A partnership making a composite return and payment must furnish the following information to all partners included in the composite return:

1. the identification number that was issued to the partnership by the department under Subparagraph B.6.b above;

2. the amount of the payment made on the partner's behalf;

3. a statement that the amount paid on the partner's behalf can be used as an advance payment of that partner's Louisiana individual income tax liability for the same tax period;

4. the mailing address of the Louisiana Department of Revenue; and

5. the world wide web address of the Louisiana Department of Revenue, www.rev.state.la.us.

G. Additional Provisions for Publicly Traded Partnerships

1. A publicly traded partnership, that is not treated as a corporation for federal income tax purposes may elect, with the prior approval of the secretary:

a. not to accept agreements filed by partners under the provisions of Paragraph B.4 or Subsection E above; and

b. to include all partners in its composite return and composite payment required by this section, including corporations and tax-exempt trusts.

2. This election must be applied for in writing and approved in writing by the secretary. Once approval is granted, the election will remain in effect until revoked by the partnership.

3. The composite payment to be made by the publicly traded partnership is the sum of each partner's share of the composite payment for all partners. Each partner's share of the composite payment is the maximum individual income tax rate multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. Inclusion in a partnership composite return filed by a publicly traded partnership shall not relieve resident partners, corporate partners, or nonresident partners who have other Louisiana source income of the obligation to file all applicable Louisiana tax returns, and report all Louisiana source income, including income from the partnership.

H. Nothing in this regulation shall restrict the secretary's authority to otherwise provide for efficient administration of the composite return and composite payment requirements of R.S. 47:201.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201.1 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:868 (April 2002).

Cynthia Bridges
Secretary

0204#067

## RULE

## Department of Social Services
## Office of Family Support

TANF Initiatives (LAC 67:III.5507, 5511, 5541, and 5547)

The Department of Social Services, Office of Family Support, has adopted LAC 67:III, Subpart 15, §§5507, 5511, 5541, and 5547.

**Title 67**
**SOCIAL SERVICES**
**Part III. Office of Family Support**
**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**
**Chapter 55. TANF Initiatives**

### §5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Workforce Commission to provide adult education, basic skills training, jobs skills training, and retention services to low income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing education, training, and employment-related services to low income families in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Within the needy family, only the parent or caretaker relative is eligible to participate. A needy family also includes a non-custodial parent who has earned income at or below 200 percent of the federal poverty level. Families who lose FITAP eligibility because of earned income are considered needy for a period of one year following the loss of cash assistance.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002).

**§5511. Micro-Enterprise Development**

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office of Women's Services to provide assistance to low-income families who wish to start their own businesses.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage. This goal will be accomplished by providing assistance to low-income families through the development of comprehensive micro-enterprise development opportunities as a strategy for moving parents into self-sufficiency.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Only the parent or caretaker relative within the needy family is eligible to participate.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002).

**§5541. Court-Appointed Special Advocates**

A. OFS shall enter into a Memorandum of Understanding with the Supreme Court of Louisiana to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. The services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the home of relatives by ensuring that the time children spend in foster care is minimized.

C. Eligibility for services is limited to needy families, that is, one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002).

**§5547. Housing Services**

A. The Department of Social Services, Office of Family Support, may enter into Memoranda of Understanding or contracts to create pilot programs that provide transitional, short-term, or one-time housing services to needy families with minor children who participate in self-sufficiency activities, who are at risk of losing existing housing arrangements, who are in an emergency situation, or who face ineligibility because of increased earnings. These services can include but are not limited to: relocation assistance; costs associated with moving or relocation; down payment of deposit and/or initial month's rent; short-term continuation of a housing voucher; down payment for the purchase of a house; housing counseling and homebuyer education for prospective homeowners; or other transitional services determined in conjunction with the Department of Social Services and the Division of Administration.

B. These services meet the TANF goal to provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives and the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

C. Eligibility for services is limited to parents, legal guardians, or caretaker relatives of minor children who are members of a needy family. A needy family is one in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, Housing and Urban Development (HUD)-funded services, or who has earned income at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002).

Gwendolyn P. Hamilton
Secretary

0204#068

## RULE

## Department of Transportation and Development
## Office of Highways/Engineering

Control of Outdoor Advertising
(LAC 70:I.127 and 134)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Department of Transportation and Development has amended a Rule entitled "Regulations for Control of Outdoor Advertising," in accordance with R.S. 48:461, et seq.

**Title 70**
**TRANSPORTATION**
**Part I. Office of the General Counsel**
**Chapter 1. Outdoor Advertisement**
**Subchapter C. Regulations for Control of Outdoor Advertising**

**§127. Definitions**

*Centerline of Highway*—a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a non-divided Interstate Highway or the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

*Controlled Areas*—Within urban areas, the applicable control area distance is 660 feet measured horizontally from the edges of the right-of-way along a line perpendicular to the centerline of the Interstate and/or Federal Aid Primary Systems. Outside urban areas, the control area extends beyond 660 feet to include any sign within visibility of the Interstate and/or Federal Aid Primary System.

*Erect*—to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

*Illegal Sign*—one which was erected and/or maintained in violation of State law or local law or ordinance.

*Inventory of 1966*—the record of the survey of outdoor advertising signs in existence along Interstate and Federal-Aid Primary Highways as of the date of the inventory compiled by the State Highway Department (now Department of Transportation and Development) pursuant to FHWA Instructional Memorandum No. 50-1-66 dated January 7, 1966.

*Lease*—an agreement, license, permit or easement, oral or in writing, by which permission or use of land or interest therein is given for a special purpose and which is a valid contract under the laws of Louisiana.

*Main-Traveled Way*—the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposing directions is a main-traveled way. The main-traveled way does not include such facilities as frontage roads, turning roadways, or parking areas.

*Maintenance*—means to allow to exist. The dimensions of the existing sign are not to be altered, nor shall any additions be made to it except for a change in message content. When the cost to maintain exceeds 1/3 of the "as new" replacement cost of the sign, it shall be considered new construction and shall be subject to all requirements pertaining to new construction.

*Safety Rest Area*—an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

*Sign*—any outdoor sign, light, display, figure, painting, drawing, message, placard, poster, billboard or other device which is designed, intended or used to advertise or inform, and any part of the advertising or informative content which is visible from any place on the main-traveled way of the Interstate or Federal Aid Primary Highway System, whether the same be a permanent or portable installation.

*Traveled Way*—the portion of a roadway designed for the movement of vehicles, exclusive of shoulders.

*Turning Roadway*—a connecting roadway for traffic turning between two intersecting portions of an interchange.

*Unzoned*—for purposes of R.S. 48:461 et seq., that no land-use zoning is in effect. The term does not include any land area which has a rural zoning classification, or which has land uses established by zoning variance, nonconforming rights recognition or special exception.

*Urban Area*—an urbanized area or an urban place as designated by he Bureau of Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the United States Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of Census.

*Visible*—for purposes of R.S. 48:461 et seq., capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

*Zoned Commercial or Industrial Areas*—those areas which are zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 2:187 (June 1976), amended by the Department of Transportation and Development ,Office of Highways/Engineering, LR 28:871 (April 2002).

**§134. Spacing of Signs**

A. Interstate, Federal-Aid Primary Highways and National Highway System signs may not be located in such a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

B. Non-Interstate Freeways on the Federal-Aid Primary System and National Highway System (Control of Access Routes)

1. No two structures shall be spaced less than 500 feet apart.

2. Outside of incorporated villages, towns and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area.

C. Non-Freeway Federal-Aid Primary Highways or National Highway System

1. Outside of incorporated villages, towns and cities, no two structures shall be spaced less than 300 feet apart.

2. Within incorporated villages, towns and cities, no two structures shall be spaced less than 100 feet apart.

D. The above provisions applying to the spacing between structures do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time. This exception does not apply to vegetation.

E. Official and "on-premise" signs, as defined in §139, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002).

Kam K. Movassaghi, P.E., Ph.D.
Secretary

0204#078

## RULE

**Department of Transportation and Development**
**Office of Highways/Engineering**

Placing of Major Shopping Area Guide Signs on Interstate Highways
(LAC 70:III.Chapter 4)

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development has adopted a Rule entitled "Placing of Major Shopping Area Guide Signs on Interstate Highways," in accordance with R.S. 48:274.3.

**Title 70**
**TRANSPORTATION**
**Part III. Highways/Engineering**
**Chapter 4. Placing of Major Shopping Area Guide Signs on Interstate Highways**

**§401. Definitions**

*Eligible Urban Highway*—an interstate highway.

*Gross Building Area*—square footage of usable area within a building, or series of buildings under one roof, that is considered usable by the retail businesses and the public; if a building is multi-level, this includes the square footage available on each level.

*Major Shopping Area*—a geographic area that:

1. consists of 30 acres or more of land;
2. includes an enclosed retail shopping mall that contains 500,000 square feet or more of gross building area;
3. includes strip-style outdoor shopping plazas and outlet shopping centers that contain no less than 240,000 square feet of gross leasable space;
4. is located within three miles of an interchange with an eligible urban highway.

*Major Shopping Area Guide Sign*—a rectangular sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

*Major Shopping Area Ramp Sign*—a sign with the common name of the retail shopping mall, directional arrows, and/or distances placed near an eligible urban highway exit ramp.

*Retail Shopping Mall*—retail businesses located within a building, or a series of buildings, connected by a common continuous roof and walls, and enclosing and covering all inner pedestrian walkways and common areas.

*Supplemental Guide Sign*—the major shopping area guide signs shall meet the applicable provisions of the Engineering Directives and Standards Memorandum for Interstate Supplemental Guide Signs Section and Manual on Uniform Traffic Control Devices. Only one supplemental guide sign assembly with a maximum of two supplemental guide sign destinations shall be allowed per exit. Other existing and new traffic generators which qualify for supplemental guide signs shall be given priority over major shopping guide signs, including permitted and installed shopping area guide signs.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:873 (April 2002).

**§403. Specifications for Major Shopping Area Mainline Guide Signs**

A. A major shopping area sign shall:

1. have a green background with a white retroreflective legend and border;
2. meet the applicable provisions of the Engineering Directives and Standards Memorandum for Interstate Supplemental Guide Signs and the Manual on Uniform Traffic Control Devices;
3. have background, legend, and border material which conforms with department specifications for reflective sheeting;
4. not be illuminated externally or internally; and
5. be fabricated, erected and maintained in conformance with department specifications and fabrications details.

B. A major shopping area guide sign shall:

1. contain the name of the major shopping area as it is commonly known to the public;
2. be a maximum of 20 characters in length; and
3. contain the exit number or, if exit numbers are not applicable, other directional information.

C. Subject to approval of the department, a major shopping area guide sign shall be installed or placed:

1. independently mounted, or if approved by the department, attached to existing guide signs;
2. to take advantage of natural terrain;
3. to have the least impact on the scenic environment;
4. to avoid visual conflict with other signs within the highway right-of-way;
5. with a lateral offset equal to or greater than existing guide signs;
6. for both directions of travel on the eligible urban highway;
7. without blocking motorists' visibility of existing traffic control and guide signs; and
8. in locations that are not overhead unless approved by the department.

D. The department reserves the right to terminate permits and cover or remove any or all shopping center guide signs under the following conditions:

1. failure of a business to meet the minimum criteria;
2. failure to pay renewal fees within 30 days of invoice;
3. during roadway construction and maintenance projects; or
4. the department determines that new or existing traffic generators have a higher priority.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:873 (April 2002).

**§405. Major Shopping Area Ramp Signs.**

A. A major shopping area ramp sign shall:

1. have a green background with a white reflective legend and border;

2. meet the applicable provisions of the Engineering Directives and Standards Memorandum for Interstate Supplemental Guide Signs and the Manual on Uniform Traffic Control Devices;

3. have background, legend, and border material which conforms with department specifications for reflective sheeting;

4. be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and

5. not be illuminated internally or externally.

B. A major shopping area ramp sign shall contain:

1. the name of the major shopping area as it is commonly known to the public; and

2. directional arrows and distances.

C. Subject to approval of the department, the major shopping area ramp sign(s) may be placed along an exit ramp or at an intersection of an access road and crossroad if the retail shopping mall driveway access, buildings, or parking areas are not visible from the exit ramp, access road, or intersection.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:874 (April 2002).

**§407. Application**

A. Applications for Major Shopping Area Guide Signs shall be made utilizing the department's "Major Shopping Area Guide Sign Permit" form and shall be submitted to the Department of Transportation and Development, Traffic Services and Engineering Section, 7686 Tom Drive, Baton Rouge, LA 70806.

B. Applications will be accepted on a "first come, first served" basis. The department will notify the public 30 days in advance of the date, time and location of acceptance of applications by publication of a notice in the newspapers statewide which are designated as "official journals."

C. All permitted major shopping area guide signs shall be fabricated and installed according to departmental standards by a private contractor employed by the permit applicant and shall be installed at locations pursuant to departmental approval and according to a Traffic Control Device Permit issued by the department. The cost of design, fabrication, and installation shall be the responsibility of the permit applicant.

D. An annual fee of $3,600 per interchange shall be payable to the department prior to installation or renewal. The interchange fee includes $1,200 for each mainline sign and $600 for each ramp or trailblazer sign. This fee represents the department's cost to administer the program. A portion of the fee is also associated with maintenance of the highway right-of-way being utilized, as well as the cost associated with anticipated maintenance of the shopping center guide sign.

E. Upon completion of installation, all major shopping area guide signs and mountings become the property of the department and shall then be maintained by the department.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:874 (April 2002).

**§409. Department Contracts**

A. The department may enter into a contract or contracts for the administration, installation, maintenance, accounting and marketing of the shopping center guide sign program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.3.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:874 (April 2002).

Kam K. Movassaghi, P.E., Ph.D.
Secretary

0204#077

## RULE

**Office of Transportation and Development**
**Office of the Secretary**
**Crescent City Connection Division**

Bridge Tolls C Free Passage for
Firemen and Law Enforcement
(LAC 70:I.505, 507, and 513)

The Department of Transportation and Development, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 70:1.505 to delete obsolete provisions and LAC 70:1.507 and LAC 70:I.513 to provide that the right of free passage for firemen and law enforcement personnel will be utilized using toll tags.

**Title 70**
**TRANSPORTATION**
**Part I. Office of the Secretary**
**Chapter 5. Tolls**

**§505.** Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:352 (March 1993), repealed LR 28:874 (April 2002).

**§507. Crescent City Connection Exemptions C Firemen**

A. Purpose. All firemen and volunteer fireman shall have free and unhampered passage on and over the Crescent City Connection bridges, the Gretna/Jackson Avenue ferry, the Algiers/Canal Street ferry and the Lower Algiers/Chalmette ferry.

B. Procedure for Firemen

1. Ferry Crossings

a. All firemen as defined in R.S. 39:191.A shall present an identification card containing a photographic picture of the fireman for inspection by the toll collector. The identification card must be issued by the municipality, parish or district as referred to in R.S. 39:191.A.

b. All firemen shall sign a register at the ferry station and provide the name of the agency, municipality, parish or district for which they are employed or engaged.

c. After compliance with §507.B.1.a and b, free unhampered passage will be granted to the fireman.

2. Bridge Crossings

a. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for firemen shall be exercised only by means of automatic vehicular identification toll tags.

b. Upon the written request of the chief of a municipal or parish fire department or of a fire prevention district, and upon payment of the required deposit, the Crescent City Connection Division of the Department of Transportation and Development shall issue to such department or district the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

c. A deposit of $25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

d. The use of the automatic vehicular identification toll tags provided to a fire department or district shall be limited to bridge crossings made by firemen during the performance of fire fighting and related duties. The appropriate fire department or district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

C. Procedure for Volunteer Fireman

1. All volunteer fire organizations shall apply to the Crescent City Connection Division and shall certify to the following:

a. the address of the volunteer fire organization's domicile or headquarters;

b. the general location served by the volunteer fire organization;

c. that the members of the volunteer fire organization are required to travel across the facilities, stated in §507.A pertaining to "purpose," in the performance of official fire fighting or fire prevention services;

d. the number of crossings made in one year, on the facilities stated in §507.A pertaining to "purpose," by volunteer firemen members of the volunteer fire organization.

2. The application must be signed by the chief executive officer of the volunteer fire organization.

3. Vehicle Passes

a. Upon approval of an application, the Crescent City Connection Division shall issue vehicle passes for use by the volunteer firemen members of the volunteer fire organization.

b. The vehicle passes shall be for the exclusive use of volunteer firemen members of the volunteer fire organization, while operating a motor vehicle, and are not transferable.

c. The vehicle passes shall not be used for any other purpose than crossing the bridges or ferries for the performance of official firefighting or fire prevention services by volunteer firemen.

d. Lost, stolen or damaged passes will not be replaced.

4. Loss of Privilege. Any prohibited use of vehicle passes issued to a volunteer fire organization will result in the loss of the privilege to obtain and use passes and/or action provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:1975.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 19:1594 (December 1993), amended LR 28:874 (April 2002).

### §513. Crescent City Connection Exemptions C Law Enforcement Personnel

A. Free passage across the Crescent City Connection, and the ferries known as Algiers/Canal Street, Gretna/Jackson Avenue, and Lower Algiers/Chalmette shall be granted to all law enforcement personnel who are employed on a full-time basis and have law enforcement agency equipment.

B. Law enforcement agency, for purposes of R.S. 40:1392 and LAC 70:I.513 shall mean any agency of the state or its political subdivisions and the federal government, who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state or similar federal laws and who are employed in this state. Officers who serve in a voluntary capacity or as honorary officers are not included.

C. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriffs' departments of the parishes of this state, municipal police departments, levee board police departments, port police departments, the United States Secret Service, the United States Marshal Service and the Federal Bureau of Investigation exclusively.

D.1. The right of free passage on and over the Crescent City Connection Bridge at New Orleans for the state police and law enforcement personnel shall be exercised only by means of automatic vehicular identification toll tags.

2. Upon the written request of the superintendent of state police or the head of an eligible law enforcement agency and payment of the required deposit, the Crescent City Connection Division for the Department of Transportation and Development shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

3. A deposit of $25 shall be charged for the issuance of each tag. The deposit shall be refunded upon the return of the tag to the Crescent City Connection Division.

4. The use of the automatic vehicular identification toll tags provided shall be limited to bridge crossings made by state police with state police equipment and by designated law enforcement personnel with law enforcement agency equipment. The appropriate law enforcement agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1392 and R.S. 48:26.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Crescent City Connection Division, LR 23:84 (January 1997), amended 28:875 (April 2002).

Alan J. LeVasseur
Executive Director

0204#025

## RULE

**Department of Transportation and Development**
**Office of the Secretary**
**Crescent City Connection Division**

Transit Lane Tolls
(LAC 70:I.515)

The Crescent City Connection Division of the Department of Transportation and Development, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 70:I.515 to provide for access to the transit lanes on the Crescent City Connection Bridge No. 2., New Orleans, Louisiana, by eligible vehicles by means of properly mounted toll tags.

**Title 70**
**TRANSPORTATION**
**Part I. Office of the General Counsel**
**Chapter 5. Tolls**
**§515. Crescent City ConnectionC Transit Lanes**

A. Intent. It is the intent of this Rule to efficiently maximize the use of the vehicular traffic lanes of the Crescent City Connection for the increased mobility of individuals and goods across the Mississippi River at New Orleans, to encourage and promote mass transit and transportation such as the use of carpools and other high-occupancy vehicle (HOV) use, while minimizing transportation-related fuel consumption and air pollution, and to provide for one-way reversible traffic flow on the transit lanes of the Crescent City Connection Bridge No. 2, and the establishment of the requirements for vehicles operating on the transit lanes.

B. Hours of Operation

1. The transit lanes of the Crescent City Connection Bridge No. 2 will be open for use by eligible vehicles in accordance with the control signals posted by the Crescent City Connection Division through the Crescent City Connection Police.

2. Generally, the transit lanes of the Crescent City Connection Bridge No. 2 will be open for use by eligible vehicles with the traffic proceeding to the Eastbank in the morning and with the traffic proceeding to the Westbank in the afternoon.

3. However, the directional traffic flow of the transit lanes may be reconfigured by the Crescent City Connection Division in its sole discretion at such times and in such directions in order to protect the public safety during emergencies and to accommodate the public interest during special events.

C. Ineligible Vehicles. The objective of the transit lanes is to provide a free flowing facility for mass transit, high occupancy vehicles, and other eligible vehicles. Accordingly, the following vehicles are prohibited from using the transit lanes during the hours of operation even though they may satisfy the vehicle occupancy requirements:

1. trucks with more than two axles or having a gross weight capacity of one ton or more;
2. vehicles towing trailers;
3. parades;
4. funeral processions;
5. pedestrians;
6. bicycles; and
7. non-motorized vehicles.

D. Eligible Vehicles. The following vehicles are eligible to use the transit lanes during the hours of operation:

1. all public mass transit vehicles, including Regional Transit Authority buses and Jefferson Transit System buses, properly displaying a valid toll tag issued by the Crescent City Connection Division ("Public Mass Transit Vehicles");

2. school buses properly displaying a valid toll tag issued by the Crescent City Connection Division ("School Buses");

3. commercial passenger vehicles manufactured to carry seven or more passengers and properly displaying a valid toll tag issued by the Crescent City Connection Division ("HOV-7");

4. other motor vehicles carrying more than a specified number of persons and properly displaying a valid toll tag issued by the Crescent City Connection Division ("HOV-2");

5. motorcycles properly displaying a valid toll tag issued by the Crescent City Connection Division ("Authorized Motorcycles"); and

6. any vehicle certified as an Inherently Low-Emission Vehicle pursuant to Title 40, Code of Federal Regulations, and labeled in accordance with Section 88.312-93(c) of such Title, and properly displaying a valid toll tag issued by the Crescent City Connection Division ("ILEV").

E. Vehicle Occupancy Requirements. The minimum occupancy requirement for vehicles designated as HOV-2 shall be two or more persons during all hours of operation. The minimum occupancy requirement for vehicles designated as HOV-7 shall continue to be seven or more persons during all hours of operation. There are no minimum occupancy requirement for vehicles designated as Authorized Motorcycles or for vehicles designated as ILEV during all hours of operation.

F. Qualifications.

1. Eligible vehicles must be prequalified to use the transit lanes as follows.

a. Public Mass Transit Vehicles. All public mass transit vehicles properly displaying a valid toll tag issued by the Crescent City Connection Division shall continue to be pre-qualified to access the transit lanes toll-free during the hours of operation.

i. Upon the written application of the chief administrative officer of the Regional Transit Authority and/or the Jefferson Transit System, and upon payment of the required deposit, the Crescent City Connection Division shall issue the number of automatic vehicular identification toll tags requested for use in connection with the use of the transit lanes by Public Mass Transit Vehicles.

ii. A refundable deposit of $25 shall be charged for the issuance of each tag.

iii. Toll tags issued for Public Mass Transit Vehicles shall expire annually and shall be renewed upon

advance application by the chief executive or administrative officer of the Regional Transit Authority and the Jefferson Transit System, as the case may be, attesting to the use of outstanding tags exclusively by Public Mass Transit Vehicles.

iv. It is incumbent upon the chief executive or administrative officer of the Regional Transit Authority and the Jefferson Transit System, as the case may be, to promptly report lost toll tags to the Crescent City Connection Division.

v. The use of the automatic vehicular identification toll tags provided to the Regional Transit Authority and the Jefferson Transit System shall be limited to crossings made by Public Mass Transit Vehicles. The Regional Transit Authority and the Jefferson Transit System, as the case may be, each shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of this regulation.

b. School Buses. All school buses properly displaying a valid toll tag issued by the Crescent City Connection Division shall continue to be authorized to access the transit lanes toll-free during the hours of operation.

i. Upon the written application of an official school system's transportation coordinator and/or bus drivers who privately own their clearly marked school buses, and upon payment of the required deposit, the Crescent City Connection Division shall issue the number of automatic vehicular identification toll tags requested for use in connection with the use of the transit lanes by School Buses. Bus drivers who privately own their clearly marked school buses must attach to their signed application an original letter from the school system they serve certifying that their bus services such school system.

ii. A refundable deposit of $25 dollars shall be charged for the issuance of each tag.

iii. Toll tags issued for School Buses shall expire annually and shall be renewed upon advance application by the official school system's transportation coordinator or bus drivers who privately own their clearly marked school buses, as the case may be, attesting to the use of outstanding tags exclusively by School Buses.

iv. It is incumbent upon the official school system's transportation coordinator and bus drivers who privately own their clearly marked school buses, as the case may be, to promptly report lost toll tags to the Crescent City Connection Division.

v. The use of the automatic vehicular identification toll tags provided to for School Buses shall be limited to crossings made by School Buses. Official school systems and bus drivers who privately own their clearly marked school buses, as the case may be, each shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of this regulation.

vi. Official school systems for purposes of this regulation are parish public school systems, private schools, and parochial schools operating in Louisiana.

c. HOV-7+. Eligible vehicles meeting the minimum occupancy requirement of seven or more persons and displaying a valid toll tag issued by the Crescent City Connection Division shall continue to be authorized to access the transit lanes toll-free during the hours of operation.

i. Upon the written application of the owner or operator of a commercial passenger vehicle manufactured to carry seven or more passengers, and upon payment of the required deposit, the Crescent City Connection Division shall issue an automatic vehicular identification toll tag requested for use in connection with the use of the transit lanes by an HOV-7 vehicle.

ii. A refundable deposit of $25 shall be charged for the issuance of each tag.

iii. Toll tags issued for HOV-7 vehicles shall expire annually and shall be renewed upon advance application of the owner or operator, attesting to the use of outstanding tags exclusively by HOV-7 vehicles.

iv. It is incumbent upon the owner and the operator of HOV-7 vehicles to promptly report lost toll tags to the Crescent City Connection Division.

v. The use of the automatic vehicular identification toll tags provided to for HOV-7 vehicles shall be limited to crossings made by eligible vehicles meeting the minimum occupancy requirements of seven or more persons. Registered owners of HOV-7 vehicles shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of this regulation.

d. HOV-2+. Eligible vehicles meeting the minimum occupancy requirement of two or more persons and displaying a valid toll tag issued by the Crescent City Connection Division.

e. Authorized Motorcycles. Motorcycles displaying a valid toll tag issued by the Crescent City Connection Division.

f. ILEV. Any vehicle certified as an Inherently Low-Emission Vehicle pursuant to Title 40, Code of Federal Regulations, and labeled in accordance with, Section 88.312-93(c) of such title, and properly displaying a valid toll tag issued by the Crescent City Connection Division.

2. Toll tags on Public Mass Transit Vehicles, School Buses, HOV-7 vehicles, HOV-2 vehicles, Authorized Motorcycles, and ILEV's must be conspicuously mounted and displayed in accordance with the instructions of the Crescent City Connection Division at all times while operating on the transit lanes.

G. Enforcement. During all hours of operation, the Crescent Connection Police shall supervise and actively control access to the transit lanes, and enforce vehicle eligibility, minimum occupancy requirements and toll tag display.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq., and R.S. 48:1101.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, Division of Crescent City Connection LR 23:84 (January 1997), amended LR 28:876 (April 2002).

Alan LeVasseur
Executive Director

0204#026